

Appendix A

POINT WELLS ISSUES MATRIX

Failure to Document Feasibility and Code Compliance of Second Access Road	
Sub-Issue	Code Provision(s)
1. No site plan depicting entirety of second access road	SCC 30.53A.512 [current] EDDS 3-01 (B)(5) [2010]
<i>See sub-issues 7 & 8</i>	
Failure to Provide Appropriate Building Setbacks for Tall Buildings from Lower Density Zones and Failure to Document Evidence for Access to High Capacity Transit for Building Heights Over 90 Feet	
Sub-Issue	Code Provision(s)
2. Buildings adjacent to property zoned low-density exceed code limitations	SCC 30.34A.040(1) [2010]
3. Buildings over 90 feet tall exceed code limitations	SCC 30.34A.040(2) [2010]
Failure to Provide Adequate Parking	
Sub-Issue	Code Provision(s)
4. Does not meet provide required number of parking stalls	SCC 30.34A.050 [2010]

Failure to Address Shoreline Management Regulations	
Sub-Issue	Code Provision(s)
5. Residential development dependent on shoreline protection measures is not allowed without a variance	SMMP, Residential Development, General Regulation #5 [1993]
6. Commercial uses on pier not allowed except certain low intensity recreational developments	SMMP, Commercial Development, Conservancy Environment Regulation #1 [1993]
Failure to Comply with Code Provisions Regarding Critical Areas	
Sub-Issue	Code Provision(s)
7. Development activities in a landslide hazard area or its setback not allowed	SCC 30.62B.340 [2007] SCC 30.32B.320 [2007]
8. Failure to submit adequate geotechnical report	SCC 30.62B.140 [2007] SCC 30.62B.320 [2007] SCC 30.62B.350 [2007]
9. Does not comply with buffer requirements	SCC 30.62A.140 [2007] SCC 30.62A.150 [2007] SCC 30.62A.320 [2010] SCC 30.62A.350 [2010]
10. Failure to submit adequate habitat management plans	SCC 30.62C.440 [2007] SCC 30.62C.460 [2007]
11. Shoreline stabilization not allowed for new residential structures	SCC 30.62A.330 [2007]

Appendix B

1 Adopted: March 16, 2016
2 Effective: April 1, 2016
3

4 SNOHOMISH COUNTY COUNCIL
5 SNOHOMISH COUNTY, WASHINGTON
6

7 AMENDED ORDINANCE NO. 16-004
8

9 AN ORDINANCE RELATING TO DEVELOPMENT PERMIT PROCESSING AND APPROVALS,
10 AMENDING TITLE 30 OF THE SNOHOMISH COUNTY CODE
11

12 WHEREAS, the Growth Management Act (GMA) Planning Goals (RCW 36.70A.020) and policies
13 in the Snohomish County GMA Comprehensive Plan (GMACP) – General Policy Plan (GPP) address
14 the efficient and fair processing of permit applications, protection of the environment, and economic
15 development; and
16

17 WHEREAS, the Washington state common law doctrine of vested rights “refers generally to the
18 notion that a land use application, under the proper conditions, will be considered only under the land
19 use statutes and ordinances in effect at the time of the application’s submission,” Noble Manor v.
20 Pierce County, 133 Wn.2d 269, 275 (1997); and
21

22 WHEREAS, the Washington state legislature has codified the vested rights doctrine for building
23 permit applications (RCW 19.27.095), short subdivision and subdivision applications (RCW 58.17.033),
24 and development agreements (RCW 36.70B.180); and
25

26 WHEREAS, municipalities are allowed to enact their own vesting schemes to suit their particular
27 local needs so long as the schemes remain within the parameters set by state law, Erickson & Assoc.
28 v. McLerran, 123 Wn.2d 864, 873 (1994); and
29

30 WHEREAS, on December 9, 2002, the Snohomish County Council (the “County Council”) adopted
31 Title 30 of the Snohomish County Code (SCC), entitled the Unified Development Code (“UDC”),
32 containing regulations that guide development within the unincorporated areas of Snohomish County;
33 and
34

35 WHEREAS, during the 2013 legislative session, the Washington state legislature passed
36 Substitute House Bill 1074 (SHB 1074), which amended RCW 58.17.140 to provide for a ten-year
37 preliminary subdivision approval period if the date of preliminary approval was on or before December
38 31, 2007, and maintained the seven-year preliminary subdivision approval period if the date of
39 preliminary approval was on or before December 31, 2014, and the five-year preliminary approval
40 period if the date of preliminary approval was on or after January 1, 2015; and
41

42 WHEREAS, pursuant to RCW 58.17.140, a city, town, or county is authorized to allow extensions
43 of time for plats; and
44

45 WHEREAS, the County Council finds that it is in the best interest of citizens of Snohomish County
46 (“the County”) and the local economy to provide up to twelve years for preliminary subdivision and
47 preliminary short subdivision approvals granted on or before December 31, 2007, to allow applicants
48 sufficient time to complete construction and file for final approval; and
49

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AN ORDINANCE RELATING TO DEVELOPMENT PERMIT
PROCESSING, AND APPROVALS, AMENDING TITLE 30
OF THE SNOHOMISH COUNTY CODE

1
2 WHEREAS, the County Council finds that it is in the best interest of citizens of the County and the
3 local economy to provide extensions of time for preliminary subdivision and preliminary short
4 subdivision approval; and

5
6 WHEREAS, the recent court case, Potala Village Kirkland, LLC v. City of Kirkland, 183 Wn. App.
7 191, 194 (2014), affirmed that statutory vested rights replaced common law vesting; and

8
9 WHEREAS, the Potala Village Kirkland, LLC v. City of Kirkland court case has resulted in
10 uncertainty in vesting for those permit application types that are not codified in state law; and

11
12 WHEREAS, a need exists to amend the SCC to provide greater consistency and predictability
13 regarding the vesting of applications and the expiration of applications, approvals and permits for
14 applicants and residents of Snohomish County; and

15
16 WHEREAS, there is a need to help reduce costs associated with applying for and processing
17 subdivision extension requests, avoid expiration of subdivision approvals, and help maintain certainty
18 for applicants; and

19
20 WHEREAS, the Snohomish County Department of Planning and Development Services ("PDS")
21 briefed the Snohomish County Planning Commission (the "Planning Commission") at a public meeting
22 on June 23, 2015; and

23
24 WHEREAS, after proper notice, the Planning Commission held a public hearing on August 25,
25 2015, to receive public testimony concerning the proposed code amendments; and

26
27 WHEREAS, at the conclusion of its deliberations the Planning Commission voted to recommend
28 that the County Council approve the proposed development regulations as written by PDS, with the
29 exception of one proposed amendment; and

30
31 WHEREAS, the Planning Commission's recommendations are enumerated in its recommendation
32 letter dated September 3, 2015; and

33
34 WHEREAS, after proper notice, the County Council held a public hearing on March 16, 2016, to
35 consider the entire record, including the Planning Commission's recommendations on the full package
36 of development regulations and PDS staff report dated August 12, 2015, which provides a detailed
37 summary and analysis of the proposed development regulations, and to receive public testimony on
38 Ordinance No. 16-004; and

39
40 WHEREAS, following the public hearing, the County Council deliberated on the code amendments
41 contained in this ordinance.

42
43 NOW, THEREFORE, BE IT ORDAINED:

44
45 Section 1. The County Council adopts the following findings in support of this ordinance:

- 46
47 A. The foregoing recitals are adopted as findings as if set forth herein.
48
49 B. This ordinance will amend Title 30 SCC in the following manner:
50

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- 1 1. The proposal would establish a vesting framework, specific to the County and consistent
2 with state law, to provide property owners, permit applicants, and the general public
3 assurance that the regulations for a project development will remain consistent during the
4 life of an application. A new section, SCC 30.70.300, would be added to clarify which
5 applications vest and to which development regulations an application vests. This
6 amendment would establish vesting for, among other things, applications that prior to the
7 Potlatch Village Kirkland, LLC v. City of Kirkland court case, had common law vesting and/or
8 had vesting established under specific provisions of the SCC.
9
- 10 2. The proposal would amend SCC 30.70.140 to: 1) clarify the expiration periods for
11 applications, approvals, and permits, consistent with state law, to provide greater
12 predictability on the timing of project development, and to improve uniformity in processing
13 similar types of applications, approvals, and permits, and 2) add provisions for extensions of
14 plats granted by PDS to add certainty to their duration.
15
- 16 3. Amends chapter 30.91C SCC to add a new definition for the term "commence construction"
17 to help clarify the expiration time frame for approvals and permits listed in SCC Table
18 30.70.140(1).
19
- 20 4. Amends other sections of Title 30 SCC for internal code consistency and for consistency
21 with the substantive amendments to chapter 30.70 SCC.
22
- 23 C. Current regulations do not clearly define the expiration of applications, approvals, and permits and
24 allow for repeated extensions of applications; this lack of specificity in the current regulations
25 creates uncertainty for the general public as to the timing that a development might occur in the
26 community.
27
- 28 D. The proposal would provide greater predictability in the permitting process, and should help retain
29 lot availability and development opportunities which could help reduce costs associated with
30 applying for and processing subdivision extension requests, avoid expiration of subdivision
31 approvals and help maintain certainty for applicants.
32
- 33 E. This ordinance is consistent with vested rights codified in state law and maintains consistency with
34 the following GMA Planning Goals:
35
- 36 1. Planning Goal 5 (RCW 36.70A.020(5)) "Economic development. Encourage economic
37 development throughout the state that is consistent with adopted comprehensive plans,
38 promote economic opportunity for all citizens of this state, especially for unemployed and for
39 disadvantaged persons, promote the retention and expansion of existing businesses and
40 recruitment of new businesses, recognize regional differences impacting economic
41 development opportunities, and encourage growth in areas experiencing insufficient
42 economic growth, all within the capacities of the state's natural resources, public services,
43 and public facilities." The proposal encourages economic development by providing a more
44 consistent and predictable permitting process for the vesting of applications and the
45 expiration of applications, approvals, and permits. The elimination of uncertainty in the
46 permitting process encourages development, as economic investment in projects will be
47 protected from changing regulations. This is particularly true for large-scale or complex
48 development that cannot be completed within a short timeframe.
49

2. Planning Goal 6 (RCW 36.70A.020(6)) "Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions." This proposal helps to protect property rights by applying vesting rights to additional applications than those currently codified under state law; this provides greater certainty to the applicant as to which development regulations an application vests, and thus provides greater assurance to a landowner in developing his or her property.
 3. Planning Goal 7 (RCW 36.70A.020(7)) "Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability." The proposal promotes the efficient processing of permit applications by amending and consolidating regulations for the vesting of applications and expiration of approvals and permits into one code chapter for quick reference and ease of use. The concept of vesting an application to regulations in place at the time a complete application is submitted is rooted in the concept of fairness, as regulations will remain static as the application is processed.
 4. Planning Goal 10 (RCW 36.70A.020(10)) "Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water." This proposal helps protect the environment by establishing limits on the duration of permit applications and approvals. Those duration periods are those that, in the experience of PDS, are reasonable for processing applications and constructing projects. This ensures that applications and approvals do not remain valid beyond what is reasonably necessary for project development, thus reducing the number of projects that potentially are constructed under outdated regulations.
- F. This ordinance is consistent with the following goals, objectives, and policies contained in the GMACP – GPP:
1. Goal ED 1 "Maintain and enhance a healthy economy." The proposed amendments help retain lot availability and development potential by providing extensions to approval periods for certain subdivision and short subdivision developments.
 2. Objective ED 1.C "Snohomish County shall recognize the needs of small and minority owned businesses as well as larger, established enterprises." The proposed amendments include a provision extending the ten-year approval period for subdivisions in RCW 58.17.140 to short subdivisions, providing smaller short subdivision developments the same approval period accorded larger subdivision developments.
 3. Goal ED 2 "Provide a planning and regulatory environment which facilitates growth of the local economy" The proposed amendments to chapter 30.70 SCC would provide greater predictability and clarity for PDS' customers and staff regarding the vesting and expiration of development applications; this would provide greater efficiency in the permitting process and therefore facilitate growth of the local economy.
 4. Objective ED 2.A "Develop and maintain a regulatory system that is fair, understandable, coordinated and timely." The proposed amendments include provisions that clarify: 1) when a development application vests, 2) to which development regulations the application vests, and 3) if any subsequent applications vest that are subordinate to the primary development

1 identified in the complete application. These proposed amendments will provide for
2 permitting regulations that are better understood because they provide clarity on vesting and
3 expiration language; are fair because the proposed amendments provide a definitive time
4 frame for vesting and expiration of applications that enables the development of a proposal;
5 and provide greater coordination between primary applications and subsequent applications
6 for a proposed development.
7

- 8 5. Policy ED 2.A.1 "Snohomish County shall work to ensure that the Snohomish County Code
9 is an understandable, accessible, and user friendly document." The proposed amendments
10 consolidate vesting and expiration language into one chapter which greatly improves the
11 accessibility of the SCC.
12
- 13 6. Policy ED 2.A.2 "Snohomish County should stress predictability but maintain enough
14 flexibility in the Comprehensive Plan and development codes to allow for timely response to
15 unanticipated and desirable developments." The proposed amendments implement ED
16 Policy 2.A.2 by establishing provisions for suspending the expiration period of an application
17 to allow for environmental review time.
18

19 G. Procedural requirements.
20

- 21 1. The proposed amendments are consistent with state law.
22
- 23 2. Pursuant to WAC 197-11-800(19), the proposal is exempt from State Environmental Policy
24 Act (SEPA) requirements.
25
- 26 3. Pursuant to RCW 36.70A.106, a notice to adopt this ordinance was received by the
27 Washington State Department of Commerce on September 3, 2015, for distribution to state
28 agencies.
29
- 30 4. The public participation process used in the adoption of this ordinance complied with all
31 applicable requirements of the GMA and the SCC.
32
- 33 5. As required by RCW 36.70A.370, the Washington State Attorney General last issued an
34 advisory memorandum in December of 2006 entitled "Advisory Memorandum: Avoiding
35 Unconstitutional Takings of Private Property" to help local governments avoid the
36 unconstitutional taking of private property. The process outlined in the State Attorney
37 General's 2006 advisory memorandum was used by the County in objectively evaluating the
38 regulatory changes proposed by this ordinance.
39

40 H. The proposed amendments are consistent with the record.
41

- 42 1. Although the recent court case, Potlatch Village Kirkland, LLC v. City of Kirkland, affirmed that
43 statutory vested rights replaced common law vesting, county and cities may develop a
44 vested rights ordinance best suited to the needs of the jurisdiction, provided the regulations
45 strike an appropriate balance between developers' rights and the public interest.
46
- 47 2. The amendments are consistent with vesting rights established through state law in (RCW
48 19.27.095), (RCW 58.17.033), and (RCW 36.70B.180).
49

3. Amendments to Title 30 SCC are necessary to provide greater clarity, certainty, and predictability for the vesting of applications and the expiration of applications, approvals, and permits.
4. Amendments to SCC 30.70.015 help clarify the exemptions for subtitle 30.7 SCC.
5. Amendments to SCC 30.70.140 provide greater clarity, flexibility, and predictability on the expiration of permits and approvals than the existing regulations by: 1) stating to which applications, approvals, and permits the expiration code applies, 2) suspending the expiration of an application when an Environmental Impact Statement (EIS) is required, and 3) requiring that the applicant monitor the time limitations and review deadlines for an application.
6. Amendments to SCC 30.70.140 change the period of expiration for applications. In general, this amendment increases the period of time for when an application is valid. These amendments provide greater predictability for the general public and PDS on proposed projects. In PDS' permitting experience, these amendments provide applicants with an adequate amount of time in which to complete their applications.
7. Amendments to SCC 30.70.140 include a change in the time frames for the expiration of approvals and permits. This amendment would provide greater predictability for the general public and PDS on proposed projects. In PDS' permitting experience, the proposed changes in time for the expiration of approvals and permits are adequate.
8. Granting an extension of preliminary subdivision and short subdivision approval may avoid additional costs associated with applying for and processing new preliminary subdivisions and short subdivisions.
9. Adoption of this proposal may assist homebuilders in the process of achieving final subdivision and short subdivision approval and may help the county meet future housing needs.
10. The addition of new section SCC 30.70.300 (Vesting of applications) provides greater clarity and predictability on the vesting of applications than the existing regulations by: 1) establishing when a development application vests, 2) stating to which development regulations the application vests, and 3) establishing the vesting of subsequent applications.
11. The ordinance adds a new definition to chapter SCC 30.91.C for new definition "commence construction" related to the expiration of approvals and permits in SCC 30.70.140.
12. Amendments to other provisions of Title 30 SCC are necessary to update cross-references and to provide internal consistency with the proposed amendments.
13. This ordinance is consistent with the record as set forth in the PDS staff memoranda dated June 10, 2015, and August 12, 2015.
14. This proposal supports and balances GMA Planning Goal 5 Economic Development, GMA Planning Goal 6 Property Rights, GMA Planning Goal 7 Permits, GMA Planning Goal 10 Environment, GPP Goal ED 2, GPP Objective ED 2.A, GPP Policy 2.A.1, GPP Policy 2.A.2

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1 and maintains consistency with vested rights outlined in state law.

2
3 a. The amendments contained in this ordinance strike an appropriate balance
4 between developers' rights and the public interest. The amendments protect
5 developers' rights by establishing vested rights for applications so applicants have
6 certainty as to which regulations apply to their projects during the processing of their
7 applications. This encourages economic development and helps protect the ability of
8 a landowner to develop his or her property. The amendments also establish limits on
9 the duration of permit applications and approvals, ensuring that applications and
10 approvals do not remain valid beyond what is reasonably necessary for project
11 development, thus reducing the number of projects that potentially are constructed
12 under outdated regulations. Further, this proposal streamlines the permitting
13 process and provides greater predictability by clarifying the expiration timeframes for
14 applications, approvals, and permits and consolidating these regulations into one
15 chapter; this improvement in the permitting process acts to encourage economic
16 development.

17
18 b. The proposal maintains consistency with vested rights codified in state law and
19 amendments to SCC 30.70.104 provide references to those provisions in state law.
20

21 Section 2. The County Council makes the following conclusions:

- 22
23 A. The proposed amendments provide greater clarity and improved predictability in the permitting
24 process.
25
26 B. The proposed amendments provide a means of addressing the economic difficulty that the
27 homebuilding industry is experiencing in completing construction of subdivisions and short
28 subdivisions.
29
30 C. The proposed amendments are consistent with Washington state law and the SCC.
31
32 D. The proposed amendments implement and are consistent with the goals, objectives, and policies of
33 the GMACP-GPP.
34
35 E. The proposal is exempt from SEPA requirements.
36
37 F. The proposed amendments do not result in an unconstitutional taking of private property for a public
38 purpose and they do not violate substantive due process guarantees.
39

40 Section 3. The County Council bases its findings and conclusions on the entire record of the
41 County Council, including all testimony and exhibits. Any finding, which should be deemed a
42 conclusion, and any conclusion which should be deemed a finding, is hereby adopted as such.
43

44 Section 4. Snohomish County Code Section 30.23A.100, last amended by Amended Ordinance
45 No. 13-050 on August 28, 2013, is amended to read:
46

47 **30.23A.100 Administrative site plan review.**

48
49 (1) An administrative site development plan shall be required for all residential development subject to
50 the requirements of this chapter. The elements of an administrative or official site plan required by

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1 chapters 30.41F and 30.42B SCC shall be combined with the administrative site plan required by this
2 chapter.

3 (2) Administrative site plan review.

4 (a) Administrative site plan review is a Type 1 decision and is subject to the review procedures in
5 chapter 30.71 SCC, except that consolidated permit review shall be granted if requested by the
6 applicant pursuant to SCC 30.70.120(2). When an administrative site plan is consolidated with a Type 2
7 decision, notwithstanding subsection (2)(b) of this section, the administrative site plan shall be
8 processed as a Type 2 decision concurrent with the Type 2 decision with which it is consolidated.

9 (b) When residential development requires both an administrative site plan approval pursuant to this
10 section and a Type 2 decision issued by the hearing examiner after an open record hearing, the
11 administrative site plan shall not be approved until the hearing examiner has issued a decision.

12 (c) To approve an administrative site plan pursuant to this section, the director must find that the
13 administrative site plan is consistent with the applicable requirements of Subtitle 30.2. The director's
14 decision on the administrative site plan shall be consistent with any hearing examiner decision issued
15 for the residential development.

16 (3) The administrative site plan application shall meet the submittal requirements established by SCC
17 30.70.030 and shall include the following:

18 (a) The building envelope of all structures and the location of all on-site recreation open space areas,
19 buffers, points of egress, ingress, and internal circulation, pedestrian facilities and parking;

20 (b) Existing and proposed topography at contour intervals of five or less feet;

21 (c) Name, address, and phone number of the owner and plan preparer(s);

22 (d) Calculations showing acreage of the site, number of dwelling units proposed, zoning, site density
23 and on-site recreation open space acreage;

24 (e) Scale and north arrow;

25 (f) Vicinity sketch (drawn to approximately 1" = 2,000' scale) showing sufficient area and detail to
26 clearly locate the project in relation to arterial streets, natural features, landmarks and municipal
27 boundaries; and

28 (g) Natural drainage courses and probable alterations which will be necessary to handle the expected
29 drainage from the proposal, and the general method proposed to comply with chapter 30.63A SCC.

30 (4) An administrative site plan shall also meet the submittal requirements established by SCC
31 30.70.030, and shall be subject to the notice requirements for a notice of application in chapter 30.70
32 SCC.

33 (5) Time limitation of application. An administrative site plan application shall expire pursuant to SCC
34 30.70.140.

35 ~~((5))~~(6) Revisions to an administrative site plan that has been approved by the department shall be
36 processed pursuant to SCC 30.70.210 or 30.70.220.

37 ~~((6))~~(7) Approval expiration.

38 ~~((a))~~ Administrative site plan approval expires ~~((when construction has not commenced within five~~
39 ~~years after the date an approved administrative site plan becomes final))~~ pursuant to SCC 30.70.140.

40 ~~((b)) For the purpose of this section, construction shall mean actual construction begun on some~~
41 ~~permanent structure, utility or facility on the site.~~

42 ~~-(c) An applicant may request an extension of an approved administrative site plan pursuant to the~~
43 ~~procedures established for extension of applications in SCC 30.70.140(2) and (3).)~~

45 Section 5. A new section is added to Chapter 30.31A of the Snohomish County Code to read:

47 **30.31A.230 Time limitation of application.**

49 An application for a site plan under this chapter shall expire pursuant to SCC 30.70.140.

Section 6. A new section is added to Chapter 30.31A of the Snohomish County Code to read:

30.31A.510 Approval expiration.

Site plan approval under this chapter shall expire pursuant to SCC 30.70.140.

Section 7. A new section is added to Chapter 30.31B of the Snohomish County Code to read:

30.31B.220 Time limitation of application.

An application for an official site plan under this chapter shall expire pursuant to SCC 30.70.140.

Section 8. A new section is added to Chapter 30.31B of the Snohomish County Code to read:

30.31B.230 Approval expiration.

Approval of an official site plan under this chapter shall expire pursuant to SCC 30.70.140.

Section 9. Snohomish County Code Section 30.34A.170, last amended by Amended Ordinance No. 13-007 on September 11, 2013, is amended to read:

30.34A.170 Submittal requirements.

(1) All applications in the UC zone shall comply with the Urban Center development submittal checklist established by the department pursuant to SCC 30.70.030.

(2) The department shall invite a staff representative from any city or town in whose urban growth area, municipal urban growth area or potential annexation area the proposed development will be located to attend the application submittal meeting.

(3) A complete application ~~((meeting the requirements of this chapter is deemed to have vested to the development regulations as of the date of submittal. A complete application does not vest to chapters 30.52A through 30.52G SCC and chapter 30.53A SCC))~~ shall vest pursuant to SCC 30.70.300.

(4) An application for urban center development shall expire pursuant to SCC 30.70.140.

Section 10. Snohomish County Code Section 30.34A.183, added by Amended Ordinance No. 13-007 on September 11, 2013, is amended to read:

30.34A.183 Approval expiration.

Urban center development approval expires ~~((when construction has not commenced within five years after the date an approved administrative site plan becomes final. An applicant may request an extension of an approved administrative site plan))~~ pursuant to ~~((the procedures established for extension of applications in))~~ SCC 30.70.140~~((2) and (3)))~~.

Section 11. Snohomish County Code Section 30.41A.300, last amended by Amended Ordinance No. 12-075 on October 3, 2012, is amended to read:

30.41A.300 Preliminary subdivision approval - term.

(1) The standard term of approval for a preliminary subdivision is ~~((five years. An applicant must file for and complete final subdivision approval within the five-year period, running from the date of preliminary~~

subdivision approval, or the approval will expire. However, preliminary subdivision approval may be extended beyond the five-year period as provided for in subsections (2), (3), and (4) of this section)) pursuant to SCC 30.70.140, except that preliminary subdivision approval may be extended for a period not to exceed four months by the county council if the applicant demonstrates that a continued good faith effort has been exerted to complete the final subdivision and provides justification of the extenuating circumstances as to why the additional four months is required. A request for consideration of the four-month extension shall be filed with the clerk of the council at least 30 days prior to the date the approval is set to expire.

~~((2) An applicant or his or her successors may request, in writing, one or more extensions of preliminary approval, not to exceed a total of two years. Such request must be received by the director at least 30 days prior to the expiration of the preliminary subdivision approval or prior extension. The department may grant an extension if the applicant can demonstrate that a good faith effort was exerted to complete the final subdivision within the initial five-year approval period in accordance with the terms of the preliminary approval, or within the subsequent extension period. Except as provided for in subsections (3) and (4) of this section, the department may not extend preliminary subdivision approval beyond a seven-year period if the date of preliminary approval is on or after January 1, 2015, and the preliminary approval period has not expired. The applicant shall pay a fee for each extension pursuant to SCC 30.86.100.~~

~~(3) In addition to any extension granted by the department, preliminary subdivision approval may be further extended for a period not to exceed four months by the county council if the applicant demonstrates that a continued good faith effort has been exerted to complete the final subdivision and provides justification of the extenuating circumstances as to why the additional four months is required. A request for consideration of the four-month extension shall be filed with the clerk of the council at any time during the final extension granted by the department.~~

~~(4) The department shall grant an extension in cases where a preliminary approval has been appealed to court, not to exceed the period of time the approval is under judicial review.))~~

~~((5))) (2) The applicant may request final subdivision approval in phases, subject to the time restrictions in SCC ((30.41A.300(1))) 30.70.140 and the terms of the preliminary subdivision approval. Open space, amenities, and other requirements of the preliminary approval shall be completed coincident with each phase of the final subdivision on a pro rata basis unless otherwise required in the preliminary approval. A revision to the preliminary approval, pursuant to SCC 30.41A.330, must be applied for with the request to complete the final subdivision improvements in phases.~~

Section 12. Snohomish County Code Section 30.41A.600, last amended by Amended Ordinance No. 11-075 on January 11, 2012, is amended to read:

30.41A.600 Final subdivision application approval - timing.

A final subdivision application shall be approved within the ~~((five-year))~~ time period pursuant to SCC 30.70.140 for preliminary subdivision approval ~~((unless an extension of time is granted pursuant to SCC 30.41A.300))~~.

Section 13. Snohomish County Code Section 30.41B.300, last amended by Amended Ordinance No. 12-075 on October 3, 2012, is amended to read:

30.41B.300 Preliminary short subdivision approval – term.

~~(1) The standard term of approval for a preliminary short subdivision is ((five years. An applicant must file for and complete final short subdivision approval within the five year period, running from the date of preliminary short subdivision approval, or the approval will expire. However, preliminary short~~

subdivision approval may be extended beyond the five year period as provided for in subsections (2) and (3) of this section.
(2) An applicant or his or her successors may request, in writing, one or more extensions of preliminary approval, not to exceed a total of two years. Such request must be received by the director at least 30 days prior to the expiration of the preliminary short subdivision approval or prior extension. The department may grant an extension if the applicant can demonstrate that a good faith effort was exerted to complete the final short subdivision within the initial five year approval period in accordance with the terms of the preliminary short subdivision approval, or within the subsequent extension period. Except as provided for in subsection (3) of this section, the department may not extend preliminary short subdivision approval beyond a seven year period if the date of preliminary approval is on or after January 1, 2015, and the preliminary approval period has not expired. The applicant shall pay a fee for each extension pursuant to SCC 30.86.110.
(3) The department shall grant an extension in cases where a preliminary approval has been appealed to court, not to exceed the period of time the approval is under judicial review)) pursuant to SCC 30.70.140.

Section 14. Snohomish County Code Section 30.41B.600, last amended by Amended Ordinance No. 11-075 on January 11, 2012, is amended to read:

30.41B.600 Final short subdivision application approval - timing.

A final short subdivision application shall be approved within the ((five-year)) time period for preliminary approval pursuant to SCC 30.70.140 ((unless an extension of time is granted pursuant to SCC 30.41B.300)).

Section 15. A new section is added to Chapter 30.41D of the Snohomish County Code to read:

30.41D.025 Time limitation of application.

A binding site plan application shall expire pursuant to SCC 30.70.140.

Section 16. Snohomish County Code Section 30.41D.105, added by Amended Ordinance No. 02-064 on December 9, 2002, is repealed.

Section 17. A new section is added to Chapter 30.41D of the Snohomish County Code to read:

30.41D.140 Approval expiration.

Binding site plan approval shall expire pursuant to SCC 30.70.140.

Section 18. Snohomish County Code Section 30.41D.340, added by Amended Ordinance No. 02-064 on December 9, 2002, is amended to read:

30.41D.340 Recording with auditor.

(1) The applicant shall file for record the approved original binding site plan and original record of survey as one document with the auditor in accordance with SCC 30.41D.110(6). The auditor shall distribute copies of the recorded document to the department, the department of public works, and the county assessor. All distributed copies shall bear the auditor's recording data.

(2) The auditor shall refuse to accept any binding site plan and record of survey for filing and recording until the director has approved and signed each document.

(3) A binding site plan and record of survey shall take effect upon recording, which must occur within ~~((420 days))~~ the timeframe established in SCC Table 30.70.140(1), after both are approved by the director, subject to the conditions contained therein.

Section 19. Snohomish County Code Section 30.41E.020, last amended by Amended Ordinance No. 12-018 on May 2, 2012, is amended to read:

30.41E.020 Procedure and special timing requirements.

(1) Boundary line adjustments shall be approved, approved with conditions, or denied as follows:

(a) The department shall process the BLA as a Type 1 decision; or

(b) If accompanied by a concurrent Type 2 application, the BLA application may, at the applicant's request, be processed as a Type 2 permit application pursuant to the provisions of SCC 30.41E.100(5). In order to be considered concurrent, the Type 2 application must be submitted to the county at the same time as the BLA application and involve the same property or adjacent property.

(c) The BLA is exempt from notice provisions set forth in SCC 30.70.050 and 30.70.060(2) except that the BLA shall comply with SCC 30.70.045(4)(d) when applicable.

(2) The department shall decide upon a BLA application within 45 days following submittal of a complete application or revision ~~((, unless the applicant consents to an extension of such time period))~~.

(3) The department or hearing examiner may deny a BLA application or void a BLA approval due to incorrect or incomplete submittal information.

(4) Multiple boundary line adjustments are allowed to be submitted under a single BLA application if:

(a) the adjustments involve contiguous parcels;

(b) the application includes the signatures of every parcel owner involved in the adjustment; and

(c) the application is accompanied by a record of survey.

(5) An application for a boundary line adjustment shall expire pursuant to SCC 30.70.140.

(6) Boundary line adjustment approval expires pursuant to SCC 30.70.140.

~~((5))~~ (7) The legal descriptions of the revised lots, tracts, or parcels, shall be certified by a licensed surveyor or title company.

~~((6))~~ (8) A boundary line adjustment shall be not approved for any property for which an exemption to the subdivision provisions set forth in SCC 30.41A.020(6) or 30.41A.020(7) or an exemption to the short subdivision provisions set forth in SCC 30.41B.020(6) or 30.41B.020(7) has been exercised within the past five years.

Section 20. Snohomish County Code Section 30.41E.400, added by Amended Ordinance No. 02-064 on December 9, 2002, is amended to read:

30.41E.400 Recording

To finalize an approved BLA, the applicant must record with the county auditor the BLA application, certified legal descriptions, and the BLA map within ~~((one year))~~ the timeframe established in SCC 30.70.140, from the date of approval, or the application and approval shall lapse. ~~((The department may grant up to one one-year extension for good cause.))~~ If the BLA affects more than one property owner, a conveyance document(s) shall be recorded at the same time as the BLA documents. The conveyance document(s) shall establish ownership consistent with the approved, adjusted boundaries. When a BLA is recorded subsequent to a record of survey for the same property, the recording number of the record of survey shall be noted on the BLA map. Recording fees and applicable state fees shall

1 be paid by the applicant. Immediately after recording, copies of the recorded BLA documents shall be
2 provided to the department by the applicant. The BLA shall not take effect until recorded.

3
4 Section 21. A new section is added to Chapter 30.41F of the Snohomish County Code to read:

5
6 **30.41F.025 Time limitation of application.**

7
8 An application for a single family detached units administrative site plan approval shall expire pursuant
9 to SCC 30.70.140.

10
11 Section 22. Snohomish County Code Section 30.41F.030 added by Amended Ordinance No.
12 07-022 on April 23, 2007, is amended to read:

13
14 **30.41F.030 Submittals.**

15
16 Administrative site plan. An administrative site plan shall be submitted with each single family detached
17 units permit application. Pursuant to SCC 30.70.030, the department will supply a submittal checklist for
18 textual and graphical requirements. A complete application for an administrative site plan meeting the
19 requirements of this section shall ~~((be deemed to have vested as of the date of submittal))~~ vest
20 pursuant to SCC 30.70.300.

21 (1) An administrative site plan for a single family detached units application may be finalized as a
22 whole or in successive divisions or phases. When phasing is proposed, and all information required by
23 this section is provided for only a portion of the entire site, a preliminary plan shall be submitted for the
24 entire site concurrently with the first phase plan. The preliminary plan shall include the following:

- 25 (i) general phasing plan for the entire site;
26 (ii) general vehicular circulation and access control plan for the entire site;
27 (iii) general pedestrian circulation plan for the entire site; and
28 (iv) general landscape and open space plan for the entire site.

29 The preliminary plan shall be used as a guide for adequate connectivity of the plan components for all
30 development phases on the site. A preliminary plan shall not be required where an entire site is
31 proposed for final administrative site plan approval.

32 (2) The site plan or phased divisions shall be submitted to the director for final approval or disapproval.
33 The director shall submit copies of the final plan for a 21-day review and comment period to appropriate
34 departments, cities or agencies for their review and comment. Reviewing departments, cities or
35 agencies may make comments consistent with the county code. If a consulted department, city or
36 agency does not respond in writing within the 21-day comment period, the director may assume that
37 the consulted department, city or agency has no comments on the proposal. Upon review of any
38 comments received, the director shall approve the site plan in writing when found to be in conformance
39 with this chapter and other applicable chapters of title 30 SCC. Upon approval, the final administrative
40 site plan shall control all development of the property.

41 (3) Within 45 days of the effective date of this chapter, the department shall develop a set of standard
42 covenants (SFDU Covenants) that will be required for all developments of single family detached units.
43 The standard SFDU Covenants shall include provisions for parking enforcement, and for the
44 maintenance of areas held in common ownership, including drive aisles and pedestrian facilities,
45 landscaping, and common open space. The standard SFDU Covenants shall also include provisions
46 authorizing the department to assess fines against the homeowners' association of a development of
47 single family detached units for the failure to enforce drive aisle parking requirements. The standard
48 SFDU Covenants shall be required to be recorded prior to the final inspection for the first unit in a
49 development of single family detached units.

Section 23. Snohomish County Code Section 30.41F.040, last amended by Amended Ordinance No. 15-103 on January 11, 2016, is amended to read:

30.41F.040 Approvals.

(1) Administrative site plan. In order to approve an administrative site plan, the department must find that the site plan is consistent with the requirements of this chapter and other applicable regulations as determined by the department.

(2) Final inspection and occupancy shall not be completed until the following requirements are met for those units included in the inspection:

(a) Fire lane signs and/or striping are completed for all access ways to the units;

(b) Address signs, street signs and unit addressing is completed;

(c) All landscaping, site amenities, fencing, pedestrian facilities, lighting, and other requirements for the units, pursuant to this chapter, are installed and approved; and

(d) Parking restrictions, common facilities, drive aisles, fire lanes and other vehicle and pedestrian facilities, and all other commonly-owned and operated property shall be protected in perpetuity by a recorded covenant, in a form approved by the director.

(3) Director's discretion. For the purpose of achieving greater innovation and design flexibility, the director and public works director shall have the authority to grant modifications or deviations as follows:

(a) Modifications or deviations may be granted to the following provisions of the county code if the applicant demonstrates that its proposal is consistent with the requirements of this chapter and the requested modification or deviation is consistent with the intent and purpose of this chapter and its provisions:

(i) chapter 30.24 SCC;

(ii) chapter 30.25 SCC;

(iii) chapter 30.26 SCC; and

(iv) chapter 30.27 SCC.

(b) The director shall retain administrative authority over the request. The director's decision shall be final and not subject to appeal to the hearing examiner.

(4) An approved administrative site plan shall expire pursuant to SCC ((30.23A.100(6))) 30.70.140.

Section 24. A new section is added to Chapter 30.42A of the Snohomish County Code to read:

30.42A.040 Time limitation of application.

An application for a site-specific rezone shall expire pursuant to SCC 30.70.140.

Section 25. A new section is added to Chapter 30.42B of the Snohomish County Code to read:

30.42B.035 Time limitation of application.

An application for a planned residential development shall expire pursuant to SCC 30.70.140.

Section 26. A new section is added to Chapter 30.42B of the Snohomish County Code to read:

30.42B.037 Approval expiration.

Approval of a planned residential development shall expire pursuant to SCC 30.70.140.

Section 27. A new section is added to Chapter 30.42C of the Snohomish County Code to read:

30.42C.040 Time limitation of application.

An application for a conditional use permit shall expire pursuant to SCC 30.70.140.

Section 28. A new section is added to Chapter 30.42C of the Snohomish County Code to read:

30.42C.105 Permit expiration.

Conditional use permits shall expire pursuant to SCC 30.70.140.

Section 29. A new section is added to Chapter 30.42F of the Snohomish County Code to read:

30.42F.025 Time limitation of application.

An application for a special use permit for community facilities for juveniles shall expire pursuant to SCC 30.70.140

Section 30. A new section is added to Chapter 30.42F of the Snohomish County Code to read:

30.42F.050 Permit expiration.

A special use permit for community facilities for juveniles shall expire pursuant to SCC 30.70.140.

Section 31. A new section is added to Chapter 30.43A of the Snohomish County Code to read:

30.43A.030 Time limitation of application.

An application for an administrative conditional use permit shall expire pursuant to SCC 30.70.140.

Section 32. A new section is added to Chapter 30.43A of the Snohomish County Code to read:

30.43A.035 Permit expiration.

Administrative conditional use permits shall expire pursuant to SCC 30.70.140.

Section 33. A new section is added to Chapter 30.43B of the Snohomish County Code to read:

30.43B.030 Time limitation of application.

An application for a variance shall expire pursuant to SCC 30.70.140.

Section 34. A new section is added to Chapter 30.43C of the Snohomish County Code to read:

30.43C.050 Time limitation of application.

An application for a flood hazard permit shall expire pursuant to SCC 30.70.140.

Section 35. Snohomish County Code Section 30.43C.200, last amended by Amended Ordinance No. 05-068 on September 7, 2005, is amended to read:

30.43C.200 Permit expiration.

~~(((1))) The ((start of construction, as defined in SCC 30.91S.570, for any new construction or substantial improvement must commence within 180 days of the issuance of a flood hazard permit or the flood hazard permit will automatically expire))~~ flood hazard permit shall expire pursuant to SCC 30.70.140.

~~(((2)) A permit may be renewed for the original project description only once for up to 24 additional months.))~~

Section 36. A new section is added to Chapter 30.43D of the Snohomish County Code to read:

30.43D.030 Time limitation of application.

An application for a flood hazard variance shall expire pursuant to SCC 30.70.140.

Section 37. A new section is added to Chapter 30.43D of the Snohomish County Code to read:

30.43D.120 Approval expiration.

Approval of a flood hazard variance shall expire pursuant to SCC 30.70.140.

Section 38. Snohomish County Code Section 30.43F.100, added by Amended Ordinance No. 15-033 on June 3, 2015, is amended to read:

30.43F.100 Class IV-General forest practices – permit required.

(1) Permit required for Class IV-General forest practices. An approved Class IV-General forest practices permit shall be obtained from the department prior to conducting any forest practices described in SCC 30.43F.030(1).

(2) Procedure. The department shall process a Class IV-General forest practices permit application according to the procedures for a Type 1 administrative decision under chapter 30.71 SCC unless submitted concurrently with a Type 2 application under chapter 30.72 SCC, in which case the Class IV-General forest practices permit application shall be consolidated and processed as a Type 2 permit application. Applications for Class IV-General forest practices permits shall be submitted in compliance with the requirements in SCC 30.70.030, and may be processed concurrently with other development applications.

(3) General requirements. The department shall not issue a Class IV-General forest practices permit unless the following requirements are met:

(a) The applicant submits a completed State Environmental Policy Act checklist;

(b) The applicant has either obtained a land disturbing activity (LDA) permit under chapter 30.63B SCC, or has obtained a determination from the department that an LDA permit is not required; and

(c) The applicant provides verification from the Washington State Department of Natural Resources that the subject site is not and has not been subject to a notice of conversion to nonforestry use under RCW 76.09.060 during the six-year period prior to the submission of the permit application.

(4) Time limitation of application. An application for a Class IV-General forest practices permit shall expire pursuant to SCC 30.70.140.

1 ~~((4))~~ (5) Compliance with other conditions. If a Class IV-General forest practices permit is issued in
2 association with any other development permits or approvals, the applicant shall comply with any
3 conditions of approval established in those associated development permits or approvals.
4 ~~((5))~~ (6) Permit expiration and extension.
5 ~~((a))~~ A Class IV-General forest practices permit approval shall ~~((be valid for 18 months following the~~
6 ~~date of issuance unless a longer time period has been established through an associated approval~~
7 ~~issued by the county, in which case the time limits applicable to the associated approval shall apply))~~
8 expire pursuant to SCC 30.70.140.
9 ~~((b) The director may grant, in writing, one extension of time, for a period of not more than 18 months.~~
10 ~~The extension shall be requested in writing prior to expiration and must demonstrate justifiable cause.~~
11 ~~-(c) The fee for the permit extension shall be in accordance with chapter 30.86 SCC)).~~

12
13 Section 39. Snohomish County Code Section 30.50.140, added by Amended Ordinance No. 14-
14 060 on August 27, 2014, is amended to read:

15
16 **30.50.140 Time limitation of application.**

17
18 (1) An application for a permit for any proposed work shall expire 18 months after the date of filing. The
19 building official is authorized to grant one extension of time for an additional period not to exceed 18
20 months. The extension shall be requested in writing prior to expiration and justifiable cause
21 demonstrated.
22 (2) The fee for the permit application extension shall be in accordance with SCC 30.86.400(6).
23 ~~((3) The expiration and extension provisions of this section do not apply to applications subject to~~
24 ~~environmental review under chapter 30.61 SCC. Applications subject to environmental review under~~
25 ~~chapter 30.61 SCC are subject to the expiration and extension provisions of SCC 30.70.140.))~~

26
27 Section 40. Snohomish County Code Section 30.63B.270, last amended by Amended
28 Ordinance No. 14-053 on August 27, 2014, is amended to read:

29
30 **30.63B.270 Time limitation of application.**

31
32 ~~((1))~~ An application for a land disturbing activity permit shall ~~((be deemed to have been abandoned 18~~
33 ~~months after the date the applicant filed a complete application, unless the applicant has pursued the~~
34 ~~submittal of all necessary information and revisions requested by the department in good faith, or a~~
35 ~~permit has been issued)) expire pursuant to SCC 30.70.140.~~
36 ~~((2) The director is authorized to grant one extension of the permit application if abandoned. Such~~
37 ~~extension shall not exceed an additional 18 month period. The application extension shall be requested~~
38 ~~in writing and the applicant shall demonstrate a justifiable cause for the extension. A renewal fee shall~~
39 ~~be paid at the time of the renewal request pursuant to SCC 30.86.510(2).))~~

40
41 Section 41. Snohomish County Code Section 30.63B.280, added by Amended Ordinance No.
42 10-023 on June 9, 2010, is amended to read:

43
44 **30.63B.280 Permit expiration ((and renewal)).**

45
46 (1) Land disturbing activity permits shall expire ~~((18 months from the date of issuance))~~ pursuant to
47 SCC 30.70.140. However, the director may set an earlier expiration date for a permit or issue a permit
48 that is non-renewable, or both, if the director determines that soil, hydrologic or geologic conditions on
49 the project site necessitate that land disturbing activity, drainage improvements and site stabilization be
50 completed in less time.

(2) No land disturbing activity shall be performed under an expired land disturbing activity permit. An applicant shall obtain a new permit before starting work authorized under the expired permit.
~~((3) The director is authorized to grant, in writing, one permit extension of not more than 18 months. The permit extension shall be requested in writing and the applicant shall demonstrate justifiable cause for the extension. The request for extension shall be submitted to the department 30 days before the date of expiration of the original permit.~~
~~(4) Prior to extension of a permit, an on-site inspection may be required to determine whether the work authorized by the original permit complies with this chapter and any other applicable law or regulation.~~
~~(5) The renewal fee in SCC 30.86.510(2) for a permit extension request shall be paid at the time the extension request is submitted.~~
~~(6) The director may extend the timeframe for submitting an extension request under SCC 30.63B.280(3) for good cause, but shall not approve any extension request received later than 30 days after the date of expiration of the original permit.))~~

Section 42. Snohomish County Code Section 30.70.015, last amended by Amended Ordinance No. 10-023 on June 9, 2010, is amended to read:

30.70.015 Exemptions.

The following ~~((actions))~~ permit types are exempt from the requirements of this subtitle, except the consistency determination required by SCC 30.70.100, and the expiration and vesting provisions of SCC 30.70.140 and SCC 30.70.300 shall apply:
~~((1) Street vacations under chapter 13.100 SCC;~~
~~—(2) Approvals relating to the use of public areas and facilities under title 13 SCC;))~~
~~((3)) (1) Building permits exempt from the State Environmental Policy Act (SEPA);~~
~~((4)) (2) Land disturbing activity permits exempt from SEPA; and~~
~~((5)) (3) All other construction ((,mechanical, and plumbing)) permits pursuant to subtitle 30 SCC that are exempt from SEPA ((and related approvals, including certificates of occupancy)).~~

Section 43. Snohomish County Code Section 30.70.140, added by Amended Ordinance No. 02-064 on December 9, 2002, is amended to read:

30.70.140 Expiration ~~((and extension of application))~~ of applications, approvals, and permits.

~~((1) An application shall expire one year after the last date that additional information is requested if the applicant has failed to provide the information, except that~~
~~—(a) The department may grant one or more extensions pursuant to SCC 30.70.140(2) and (3) below;~~
~~—(b) The department may set an expiration date of less than one year when the permit application is the result of a code enforcement action; and~~
~~—(c) No application shall expire when under review by the department following submittal of a complete application or timely resubmittal of an application when all required information has been provided.~~
~~—(2) The applicant may request an extension to a date certain prior to expiration of the application. The department may grant an extension request if the criteria of SCC 30.70.140(3) are met. If granted, the department shall set a reasonable expiration date that may be different from the date requested by the applicant.~~
~~—(3) An applicant's extension request may only be granted when the following criteria are met:~~
~~—(a) A written request for extension is submitted at least 14 days prior to the expiration date;~~
~~—(b) The applicant demonstrates that circumstances beyond the control of the applicant prevent timely submittal of the requested information; and~~

~~—(c) The applicant provides a reasonable schedule for submittal of the requested information.~~
~~—(4) The department may extend an expiration date for an application with no written request from an applicant when additional time for county processing or scheduling of appointments is required, when the department needs information or responses from other agencies, or under other similar circumstances.~~
~~—(5) A permit application approved for issuance pursuant to subtitle 30.5 SCC but not paid for and issued shall expire six months after the date it is approved for issuance.))~~
(1) This section shall apply to:
(a) New applications, approvals, and permits set forth in SCC Table 30.70.140(1); and
(b) Existing applications set forth in SCC Table 30.70.140(1) that were deemed complete but that were not approved or denied prior to [insert effective date of this ordinance], provided that the department shall provide notice to the applicant one year prior to the expiration date of the application.
(2) SCC Table 30.70.140(1) establishes the expiration period for applications, approvals, and permits, except that:
(a) When an EIS is required, the expiration period of an application will be suspended until the FEIS is issued. The suspension of the expiration period for an application shall not exceed 18 months unless approved by the director; and
(b) When otherwise modified by the hearing examiner.
(3) The applicant is responsible for monitoring the expiration periods for an application, approval, or permit. The county is not required to inform an applicant when an application, approval, or permit will expire or has expired.
(4) For minor revisions under SCC 30.70.210 and major revisions under SCC 30.70.220, the term of expiration for an application shall be 12 months and shall not extend the term of the corresponding development application approval or concurrency determination.

SCC Table 30.70.140(1)

<u>Approval Type</u>	<u>Expiration of application</u>	<u>Expiration of approval or permit</u>
<u>Administrative Conditional Use Permit</u>	<u>36 months</u>	<u>5 years to commence construction or use</u>
<u>Administrative Conditional Use Permit – Temporary Dwelling During Construction</u>	<u>12 months</u>	<u>As determined in decision</u>
<u>Administrative Conditional Use Permit - Temporary Dwelling For Relative</u>	<u>12 months</u>	<u>Shall be subject to annual renewal</u>
<u>Administrative Conditional Use Permit - Other Temporary Uses</u>	<u>12 months</u>	<u>As determined in decision</u>
<u>Administrative Site Plan (pursuant to chapter 30.23A SCC)</u>	<u>36 months</u>	<u>5 years to commence construction or use</u>
<u>Binding Site Plan</u>	<u>36 months</u>	<u>6 months to record</u>

<u>Boundary Line Adjustment</u>	<u>12 months</u>	<u>12 months to record. The department may grant up to one 12-month extension.</u>
<u>Building Permit</u>	<u>Per subtitle 30.5 SCC</u>	<u>Per subtitle 30.5 SCC</u>
<u>Conditional Use Permit</u>	<u>36 months</u>	<u>5 years to commence construction or use</u>
<u>Flood Hazard Permit & Flood Hazard Variance</u>	<u>18 months</u>	<u>18 months from the date of issuance. Start of construction, as defined in SCC 30.91S.570, must commence within 180 days.</u>
<u>Forest Practices (Class IV-General)</u>	<u>18 months</u>	<u>36 months</u>
<u>Land Disturbing Activity</u>	<u>18 months</u>	<u>36 months</u>
<u>Official Site Plan and Site Plans (pursuant to chapters 30.31A and 30.31B SCC)</u>	<u>36 months</u>	<u>5 years to commence construction or use</u>
<u>Planned Residential Development</u>	<u>36 months</u>	<u>5 years to commence construction or use</u>
<u>Pre-application Concurrency Determination</u>	<u>6 months</u>	<u>Per SCC 30.66B.155</u>
<u>Rezones</u>	<u>36 months</u>	<u>Not applicable</u>
<u>Shoreline Conditional Use Permit</u>	<u>36 months</u>	<u>Per chapter 30.44 SCC</u>
<u>Shoreline Substantial Development Permit</u>	<u>36 months</u>	<u>Per chapter 30.44 SCC</u>
<u>Single Family Detached Units</u>	<u>36 months</u>	<u>5 years to commence construction or use</u>
<u>Special Use Permit (pursuant to chapter 30.42F SCC)</u>	<u>36 months</u>	<u>5 years to commence construction or use</u>
<u>Subdivisions</u>	<u>48 months</u>	<u>Per RCW 58.17.140, except that:</u> <ul style="list-style-type: none"> <u>For preliminary subdivisions that were approved on or after January 1, 2008, one or more</u>

		<p><u>extensions not to exceed a total extension time of two years may be granted by the department. Such request must be received by the director at least 30 days prior to the expiration of the preliminary subdivision approval or prior extension. The applicant shall pay a fee for each extension pursuant to SCC 30.86.100.</u></p> <ul style="list-style-type: none"> • <u>For preliminary subdivisions that were approved on or before December 31, 2007, one or more extensions up to a total term of twelve years may be granted by the department. Such request must be received by the director at least 30 days prior to the expiration of the preliminary subdivision approval or prior extension. The applicant shall pay a fee for each extension pursuant to SCC 30.86.100.</u>
<u>Short Subdivisions</u>	<u>48 months</u>	<p><u>60 months, except that:</u></p> <ul style="list-style-type: none"> • <u>For preliminary short subdivisions that were approved on or after January 1, 2008, one or more extensions not to exceed a total extension time of two years may be granted by the department. Such request must be received by the director at least 30 days prior to the expiration of the preliminary short subdivision approval or prior extension. The applicant shall pay a fee for each extension pursuant to SCC 30.86.110.</u> • <u>For preliminary short subdivisions that were approved on or before December 31, 2007, one or more extensions up to a total</u>

		<u>term of twelve years may be granted by the department. Such request must be received by the director at least 30 days prior to the expiration of the preliminary short subdivision approval or prior extension. The applicant shall pay a fee for each extension pursuant to SCC 30.86.110.</u>
<u>Urban Center Development</u>	<u>36 months</u>	<u>5 years to commence construction or use</u>
<u>Variance</u>	<u>36 months</u>	<u>Not applicable</u>

Section 44. A new section is added to Chapter 30.70 of the Snohomish County Code to read:

30.70.300 Vesting of applications.

The purpose of this section is to implement local vesting regulations that are best suited to the needs of the county and consistent with state law. This section is intended to provide property owners, permit applicants, and the general public assurance that the regulations for project development will remain consistent during the life of an application.

(1) Except for rezones, an application for a permit or approval type set forth in SCC Table 30.70.140(1) shall be considered under the development regulations in effect on the date a complete application is filed, pursuant to SCC 30.70.040. Provided, that projects under the authority of the director of the department of public works or the county engineer pursuant to SCC 30.63B.100 shall vest as of the date the county engineer approves a design report or memorandum for the project.

(2) Building permit or land disturbing activity permit applications that are subsequent and related to the development identified in an application listed in SCC 30.70.300(2)(a)-(m), shall vest to the development regulations in effect at the time a complete application listed in SCC 30.70.300(2)(a)-(m) is filed pursuant to SCC 30.70.040.

(a) Administrative conditional use permit;

(b) Administrative site plan (pursuant to chapter 30.23A SCC);

(c) Binding site plan;

(d) Conditional use permit;

(e) Official site plan and site plan (pursuant to chapters 30.31A and 31.31B SCC);

(f) Planned residential development;

(g) Shoreline conditional use permit;

(h) Shoreline substantial development permit;

(i) Single family detached units;

(j) Special use permits (pursuant to chapter 30.42F SCC);

(k) Short subdivision;

(l) Subdivision; and

(m) Urban center development.

However, a complete application for any subsequent application must be submitted prior to the expiration date of the permit(s) or approval(s) applied for in the application types listed in this subsection.

(3) For the purpose of this section, "development regulation" means those provisions of title 30 SCC that exercise a restraining or directing influence over land, including provisions that control or affect the type, degree, or physical attributes of land development or use. For the purpose of this section, "development regulation" does not include fees listed in title 30 SCC or procedural regulations.

(4) A complete building permit application shall always be subject to that version of subtitle 30.5 SCC in effect at the time the building permit application is submitted.

(5) Notwithstanding any other provision in this section, any application dependent on approval of a rezone application shall not vest until the underlying rezone is approved.

Section 45 Snohomish County Code Section 30.86.100, last amended by Amended Ordinance No. 15-005 on March 18, 2015, is amended to read:

30.86.100 Subdivision fees.

Table 30.86.100 - SUBDIVISION FEES

OTHER FEES: All necessary fees for subdivision approval/recording are not listed here. Examples of fees not collected by the department include: (1) Applicable private well and septic system approvals (Snohomish Health District); (2) right-of-way permit (department/department of public works), see SCC 13.110.020; and (3) subdivision recording fees (auditor).

PRE-APPLICATION CONFERENCE FEE)	\$480
PRELIMINARY SUBDIVISION FILING FEE (a), (b)	
Base fee	\$4,680
Plus \$ per lot	\$132
Plus \$ per acre	\$78
Total maximum fee	\$21,600
SUBDIVISION MODIFICATIONS	\$1,200
REVISIONS TO APPROVED PRELIMINARY SUBDIVISIONS	
Minor revision-administrative	\$312
Major revision-public hearing	\$1,248
CONSTRUCTION PLAN CHECK FEE (c)	
Per lot (d)	\$192
Per tract or non-building lot	\$192

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ROAD INSPECTION FEE	
Per lot ⁽¹⁾	\$192
Per tract or non-building lot	\$192
FINAL SUBDIVISION FEES	
Filing fee	\$2,400
Document check and sign installation fee	\$264/lot and unit cost/sign required
ROAD SECURITY DEVICE ADMINISTRATION FEE ⁽²⁾	
Performance security option ⁽³⁾	\$24.50/Lot
Maintenance security ⁽⁴⁾	\$31.00/Lot
"MARKUP" CORRECTIONS FEE ⁽⁵⁾	\$240
SUBDIVISION ALTERATION	PLACEHOLDER POSITION
MODEL HOME FEES ⁽⁶⁾	
Base fee	\$360
Plus \$ per subdivision NOTE: For reference notes, see table following SCC 30.86.110.	120
PRELIMINARY SUBDIVISION EXTENSION ⁽⁷⁾	\$500
<p>Reference notes for subdivision and short subdivision fee tables:</p> <p>(1) A preliminary filing fee consists of the sum of a base fee, a per lot fee, a per acre fee, and a supplemental fee if applicable.</p> <p>(2) When a preliminary subdivision application is considered in conjunction with a rezone for the same property, the total preliminary subdivision fee shall be reduced by 25 percent. If a preliminary subdivision application is considered in conjunction with a planned residential development, with or without a rezone, the total preliminary subdivision fee shall be reduced by 50 percent. The sum of the above fees shall be limited to \$16,800.</p> <p>(3) Collected when the preliminary subdivision applicant submits the construction plan.</p> <p>(4) When three or more contiguous lots are to be developed with a single townhouse building (zero lot line construction), then a plan check fee of \$192.00 per building will be charged and the plan check or inspection fee will not be based on the number of lots.</p> <p>(5) Paid by the applicant to cover the costs of administering security devices as provided by chapter 30.84 SCC.</p> <p>(6) This fee applies if the developer elects to carry out minimum improvements using the provisions of SCC 30.41A.410(1)(b) before requesting final approval, and is in addition to subsequent subdivision road inspection fees.</p>	

(7) Collected in accordance with SCC 30.41A.410(2).

(8) This fee applies whenever an applicant fails to submit required corrections noted on "markup" final subdivision drawings or other documents during the final subdivision review.

(9) This fee is in addition to the residential building permit fees for plan check, site review and access permit.

(10) This fee applies to preliminary subdivision approval extensions pursuant to SCC ((30.41A.300)) Table 30.70.140(1).

Section 46. Snohomish County Code Section 30.86.110, last amended by Amended Ordinance No. 09-018 on June 3, 2009, is amended to read:

30.86.110 Short subdivision fees.

Table 30.86.110 - SHORT SUBDIVISION FEES

OTHER FEES: All necessary fees for subdivision approval/recording are not listed here. Examples of fees not collected by the department include: (1) Applicable private well and septic system approvals (Snohomish Health District); (2) right-of-way permit (the department/ department of public works), see SCC 13.110.020; and (3) short subdivision recording fees (auditor).

PRE-APPLICATION CONFERENCE FEE)	\$480
PRELIMINARY SHORT SUBDIVISION FILING FEES (1)	
Base fee	\$1,560
Plus \$ per acre	\$78
Plus \$ per lot	\$78
SHORT SUBDIVISION MODIFICATION APPLICATION	\$960
PLAN/DOCUMENT RESUBMITTAL FEE (2)	\$240
SHORT SUBDIVISION REVISIONS AFTER PRELIMINARY APPROVAL	\$312
SHORT SUBDIVISION FINAL APPROVAL	\$600
SHORT SUBDIVISION FINAL DOCUMENT CHECK	\$1,800
RECORDING OF FINAL SHORT SUBDIVISION	\$30
ALTERATIONS TO RECORDED SHORT SUBDIVISIONS	\$420
PRELIMINARY SHORT SUBDIVISION EXTENSION(3)	\$500

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Reference notes:

(1) A preliminary filing fee consists of the sum of a base fee, a per lot fee, a per acre fee, and a supplemental fee if applicable.

(2) This fee applies to the resubmittal of short subdivision plans and documents after a second review for which the applicant did not include corrections noted by the department, or the applicant made revisions, which necessitate additional review and comments.

(3) This fee applies to preliminary short subdivision approval extensions pursuant to SCC ((30.41B.300)) Table 30.70.140(1).

Section 47. Snohomish County Code Section 30.86.220, last amended by Amended Ordinance No. 15-005 on March 18, 2015, is amended to read:

30.86.220 Administrative conditional use permit fees.

Table 30.86.220 - ADMINISTRATIVE CONDITIONAL USE PERMIT (ACU) FEES⁽¹⁾

PRE-APPLICATION CONFERENCE FEE	\$480
ADMINISTRATIVE CONDITIONAL USE (ACU) PERMIT, Except: ACU for Expansion of a nonconforming use as provided below	\$180
ACU FOR EXPANSION OF A NONCONFORMING USE	
Base fee	\$1,200
Plus \$ per acre	\$60
Total maximum fee for expansion of a nonconforming use	\$3,600
((TIME EXTENSION REQUEST))	(((\$120))
MINOR REVISION REQUEST	\$240
MAJOR REVISION REQUEST	\$960
*TEMPORARY WOODWASTE RECYCLING PERMIT	\$600
*TEMPORARY WOODWASTE STORAGE PERMIT	\$600
ANNUAL RENEWAL FEE FOR ANY TEMPORARY USE	\$48

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Reference note:

(1) Administrative conditional use permit fees for playing fields on designated recreational land in accordance with SCC 30.28.076 shall be set at \$0.00.

Section 48 Snohomish County Code Section 30.86.230, last amended by Amended Ordinance No. 07-108 on November 19, 2007, is amended to read:

30.86.230 Variance fees.

Table 30.86.230 -VARIANCE FEES

PRE APPLICATION CONFERENCE FEE	\$480
STANDARD VARIANCE	\$1,200
SINGLE FAMILY RESIDENCE REQUEST FOR A SINGLE	
REVISION TO A DIMENSIONAL REQUIREMENT	\$600
((TIME EXTENSION REQUEST))	(((\$120))
MINOR REVISION REQUEST	\$312
MAJOR REVISION REQUEST	\$1,248

Section 49. Snohomish County Code Section 30.86.510, last amended by Amended Ordinance No. 10-086 on October 20, 2010, is amended to read:

(1) This section establishes drainage and land disturbing activity fees that apply when drainage or land disturbing activity review is a required component of a permit application or is a condition of a land use approval. Such fees are in addition to any other fees required by law. Construction applications referenced in this code section include applications for grading permits submitted prior to September 30, 2010, and building, right-of-way and land disturbing activity permit applications.

(2) Fees for plan review and inspection of drainage plans and land disturbing activities are established in SCC Table 30.86.510(2)(A) and (B). SCC Table 30.86.510(2)(A) and (B) includes fees for plan review and inspection of independent activities as well as fees for plan review and inspection of multiple activities. Whenever two or more proposed activities subject to fees in SCC Table 30.86.510(2) are submitted concurrently as part of the same project, the applicant shall only pay one fee; the applicable fee shall be the one associated with the proposed activity that meets the highest threshold level in SCC Table 30.86.510(2)(A) and (B).

(3) Drainage and land disturbing activity fees shall be based upon the fee table in effect at the time of payment.

(4) For complete applications submitted to the department on or after September 30, 2010, the applicable drainage and land disturbing activity fees in SCC Table 30.86.510(2)(A) and (B) shall be

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paid as follows:

(a) For applications that require preliminary land use approval or for which site plan approval is required or requested prior to the submittal of construction applications, the following percentages of the fees shall be paid as follows:

(i) Fifty percent of the fees shall be paid upon submittal of the initial application(s) for land use or site plan approval;

(ii) Twenty-five percent of the fees shall be paid upon submittal of the construction application(s); and

(iii) Twenty-five percent of the fees shall be paid prior to permit issuance;

(b) For all other applications, except single-family residential building permit applications, 75 percent of the fees shall be paid upon submittal of the construction application(s) and 25 percent of the fees shall be paid prior to permit issuance; and

(c) For single-family residential building permit applications, 50 percent of the fees shall be paid upon submittal of the construction application(s) and 50 percent of the fees shall be paid prior to permit issuance.

(5) When inspection services are requested for complete construction applications submitted to the department before September 30, 2010, and for which permits or approvals are issued on or after September 30, 2010, the following percentages of the applicable fees in SCC Table 30.86.510(2)(A) shall be paid as follows:

(a) Fifty percent of the fees shall be paid prior to single-family residential building permit issuance when the permit application included the submittal of a stormwater site plan or stormwater pollution prevention plan; and

(b) Twenty-five percent of the fees shall be paid prior to permit issuance for all applications, except as provided above in subsection (5)(a).

Table 30.86.510(2)

FEEES FOR DRAINAGE AND LAND DISTURBING ACTIVITIES

(A) FEE LEVELS FOR PLAN REVIEW AND INSPECTION ⁽¹⁾	DRAINAGE (new, replaced, or new plus replaced impervious surface in square feet)	GRADING (cut or fill in cubic yards, whichever is greater)	FEE
Level 1(a): Drainage only	1 - 1,999		\$ 375
Level 1(b): Grading only		1 - 500	\$ 350
Level 1(a)-(b): Drainage and Grading	1 - 1,999 and 1 - 500		\$ 725
Level 2	2,000 - 4,999 and 0 - 500		\$ 1,575
Level 3	5,000 - 9,999 and/or 501 - 4,999		\$ 2,450
Level 4	10,000 - 39,999 and/or 5,000 - 14,999		\$ 4,800
Level 5	40,000 - 99,999 and/or 15,000 - 69,999		\$ 12,700
Level 6	100,000 or more and/or 70,000 or more		\$ 34,700
(B) FEE LEVELS FOR PLAN REVIEW AND INSPECTION ⁽¹⁾	CLEARING ⁽²⁾		FEE
Level 1	1 - 6,999 sq. ft.		\$ 750
Level 2	7,000 sq. ft. or more		\$ 1,650
Level 3: Conversion only	Converts three-quarters of an acre (32,670 sq. ft.) or more of native vegetation to lawn/landscaped areas, or converts 2.5 acres (108,900 sq. ft.) or more of		\$ 2,800

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	native vegetation to pasture.	
(C) FEES FOR ACTIVITIES NOT OTHERWISE LISTED:		
Pre-application site review		\$ 250
Subsequent plan review ⁽¹⁾		\$ 350
Field revisions ⁽⁴⁾		\$ 350
Modification, waiver, or reconsideration issued pursuant to SCC 30.63A.830 through 30.63A.842		See SCC 30.86.515
Investigation penalty ⁽⁷⁾		100% of the applicable drainage and land disturbing activity fee
((Renewal of a land disturbing activity application or permit ⁽⁵⁾))		((\$100 plus a percentage of the original application or permit fee equal to the percentage of approved or permitted activity to be completed))
Dike or levee construction or reconstruction grading plan review and inspection fee when implementing a Snohomish County approved floodplain management plan		\$ 60 per hour
Drainage plan review for mining operations ⁽⁶⁾		\$ 156 per acre
Monitoring associated with drainage plan review for mining operations		\$ 141 per hour
Consultation pursuant to SCC 30.63B.030(2) or 30.63B.100(2)		
(a) Land Use		(a) \$ 850
(b) Engineering		(b) \$ 975
(a)+(b) Land Use and Engineering Combination		(a)+(b) \$ 1,655
(D) SECURITY DEVICE ADMINISTRATION FEES:		
Performance Security		\$ 19.50 per subdivision or short subdivision lot or \$0.005 per square foot of impervious area for all other permits
Maintenance Security		\$ 15.00 per subdivision or short subdivision lot or \$0.003 per square foot of impervious area for all other permits
REFERENCE NOTES:		
(1) Drainage and land disturbing activity reviews associated with projects administered by Snohomish Conservation District shall not be subject to plan review and inspection fees.		
(2) Fee includes drainage plan review and inspection for clearing activity only. When clearing is combined with other land disturbing activities in SCC Table 30.86.510(2)(A), fee levels 1 - 6 for drainage and or grading plan review and inspection also apply.		
(3) These fees apply on third and subsequent plan review submittals when an applicant fails to submit required corrections noted on "markup" plans, drawings, or other required submittal documents.		
(4) These fees apply whenever an applicant proposes changes, additions, or revisions to previously approved plans, drawings, or other required submittal documents.		
(((5))) ((Requests for renewals of land disturbing activity approvals or permits must include a written statement of the percentage of approved or permitted activity that remains to be completed. Applicants may provide this written statement for all level 1 projects. The engineer of record must provide the written statement for all other projects.))		
(((6))) (5) Acreage for drainage plan review for mining operations is based on mined area. Mined area includes all area disturbed in conjunction with the mining operation which shall include, but is not limited to, areas cleared, stock piles, drainage facilities, access roads, utilities, mitigation areas, and all other activity which disturbs the land. Fees for phased mine developments and mining site restoration plans of phased mine developments shall be calculated separately for each phase of mining based upon the area for each phase.		
(((7))) (6) Any person who commences any land disturbing activity before obtaining the necessary permits shall be subject to an investigation penalty in addition to the required permit fees.		

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Section 50. A new section is added to Chapter 30.91C of the Snohomish County Code to read:

30.91C.267 Construction, commence (Commence construction).

"Construction, commence" ("Commence construction") means the point in time demarking the breaking of ground for the construction of a development.


Section 51. Severability and Savings. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid by the Growth Management Hearings Board (Board), or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however, that if any section, sentence, clause or phrase of this ordinance is held to be invalid by the Board or court of competent jurisdiction, then the section, sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.

PASSED this 16th day of March, 2016

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington


Terry Ryan
Council Chair


ATTEST:


Debbie Eco, CMC
Clerk of the Council

☒ APPROVED
☐ EMERGENCY
☐ VETOED

Date: 3/22/16, 2016

ATTEST:


Dave Somers
County Executive

Approved as to form only:

Deputy Prosecuting Attorney

D-20

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Appendix C

2011 WL 7881229 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)

Central Puget Sound Growth Management Hearings Board

State of Washington

CITY OF SHORELINE, TOWN OF WOODWAY, AND SAVE RICHMOND BEACH, ET AL., PETITIONERS

v.

SNOHOMISH COUNTY, RESPONDENT

AND

BSRE POINT WELLS, LLC, INTERVENOR

AND

THE TULALIP TRIBES, AMICUS CURIAE

Coordinated Case Nos. 09-3-0013c and 10-3-0011c

Shoreline III and Shoreline IV

May 17, 2011

CORRECTED FINAL DECISION AND ORDER^{al}

I. SYNOPSIS

**1 The City of Shoreline, Town of Woodway, and Save Richmond Beach, a neighborhood organization, challenged Snohomish County's amendments of its comprehensive plan and development regulations that provide for the redevelopment of Point Wells, an unincorporated urban area.*

Comprehensive Plan amendment Ordinance Nos. 09-038 and 09-051 designated Point Wells an Urban Center. The Board concluded the action was clearly erroneous in three respects: the designation was inconsistent with the County's Urban Center comprehensive plan provisions; because the action thwarted GMA compliance by the City of Shoreline, the action lacked consistency with the comprehensive plans of adjacent jurisdictions; and the action was not guided by several GMA Goals.

Development regulation amendments, Ordinance Nos. 09-079 and 09-080, adopted Urban Center provisions specific to Point Wells. The Board dismissed Petitioners' GMA allegations based on abandonment or citation to inapplicable statutory provisions. The Petitioners carried their burden of showing the ordinances were not guided by certain GMA Goals, but because the goal violations were not tied to specific statutory requirements, the Board did not reach a finding of non-compliance.

The City of Shoreline also raised SEPA challenges. The Board remanded the County's FSEIS for Ordinance Nos. 09-038 and 09-051 for analysis of reasonable alternatives. As to the DNS for Ordinance Nos. 09-079 and 09-080, the Board ruled that because the DNS is predicated on an inadequate FSEIS, the DNS is also inadequate. The Board further found certain new information and changes to the proposal required addenda to the DNS.

The Board entered a determination of invalidity for Ordinance Nos. 09-038 and 09-051, and remanded all four Ordinances to the County, setting a one-year compliance schedule based on the unusual complexity of the matter.

II. PROCEDURAL BACKGROUND

Point Wells Is an unincorporated urban area in Snohomish County which for many decades has served as an oil depot and tank farm. Point Wells is situated adjacent to the City of Shoreline and the Town of Woodway. On August 12, 2009, Snohomish County adopted Ordinance Nos. 09-038¹ and 09-051² amending its comprehensive plan policies and land use map to allow the redesignation of Point Wells from Urban Industrial to Urban Center.³ Environmental review for the ordinances conducted pursuant to the State Environmental Policy Act (SEPA) consisted of a Draft Supplemental Environmental Impact Statement (DSEIS) issued in February 2009 and Final Supplemental Environmental Impact Statement (FSEIS) issued June 2009.

*2 The City of Shoreline, Town of Woodway, and resident organizations and individuals from the Richmond Beach neighborhood⁴ (referred to as Save Richmond Beach) filed petitions for review challenging the Urban Center designation for Point Wells and the adequacy of the SEPA review. The three petitions were consolidated as GMHB Case No. 09-3-0013c *Shoreline III*.⁵ Settlement extensions were granted while the parties discussed possible development regulations to implement the Urban Center designation.

On May 12, 2010, the County adopted Ordinance Nos. 09-079⁶ and 09-080⁷ amending its development regulations for Urban Centers to accommodate the Point Wells designation. Environmental review for these ordinances was based on a Declaration of Non-significance (DNS). Shoreline, Woodway, and Save Richmond Beach again filed petitions for review, which were consolidated as GMHB Case No. 10-3-0011c *Shoreline IV*.

The Board coordinated these two cases for briefing and hearing.⁸ The Prehearing Order set forth a combined set of legal issues for the coordinated cases.⁹ BSRE Point Wells LLC (BSRE), the Point Wells property owner, intervened.¹⁰ The Tulalip Tribes subsequently filed a brief *amicus curiae*.¹¹

Dispositive motions and motions to supplement the record were timely filed.¹² The Board's Order on Dispositive Motions dismissed Legal Issue No. 7 — notice and public participation — and ruled that Save Richmond Beach lacked standing to allege SEPA violations.¹³ Other dispositive motions were denied.

The Hearing on the Merits was convened March 2, 2011, in the Snohomish County Administrative Building in Everett. Margaret Pageler served as the presiding officer, with Board members David O. Earling and William Roehl as panel members and Board staff attorney Julie Taylor also attending.

Petitioner City of Shoreline appeared by its attorney Ian Sievers. Petitioner Town of Woodway appeared by its attorney Wayne D. Tanaka. Petitioners Save Richmond Beach were represented by their attorney Zachary R. Hiatt. Respondent Snohomish County was represented by County Deputy Prosecuting Attorneys John R. Moffat and Martin D. Rollins. Intervenor BSRE appeared by its attorney Gary D. Huff. Court reporting services were provided by Katie Eskew of Byers and Anderson. A number of observers attended the hearing.

As instructed in the pre-hearing order, the parties coordinated their briefing and arguments. The hearing provided the Board an opportunity to ask questions clarifying important facts in the case and providing better understanding of the legal arguments of the parties.

III. JURISDICTION AND STANDARD OF REVIEW

Board Jurisdiction

The Board finds that the Petitions for Review were timely filed, pursuant to RCW 36.70A.290(2). The Board finds that Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2).¹⁴ The Board finds that it has jurisdiction over the subject matter of the petitions pursuant to RCW 36.70A.280(1).

Standard of Review

*3 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.¹⁵ This presumption creates a high threshold for challengers as the burden is on the Petitioners to demonstrate that any action taken by Snohomish County is not in compliance with the GMA.¹⁶

The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.¹⁷ The scope of the Board's review is limited to determining whether Snohomish County has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.¹⁸ The Board shall, after full consideration of the petition, find compliance unless it determines that the County's action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.¹⁹ In order to find the Snohomish County action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been committed."²⁰

In addition, when reviewing Snohomish County's planning decisions, the Board is instructed to recognize "the broad range of discretion that may be exercised by counties and cities" and to "grant deference to counties and cities in how they plan for growth."²¹ However, the County's actions are not boundless; their actions must be consistent with the goals and requirements of the GMA.²²

This case also includes allegations that the County violated the State Environmental Policy Act (SEPA), Chapter 43.21 C RCW, as to both the adequacy of the EIS²³ and issuance of a DNS without certain supplementing addenda.²⁴ When the adequacy of substantive environmental analysis is challenged, the Board must determine if Snohomish County's analysis was clearly erroneous, with the adequacy of the EIS reviewed *de novo* and tested under the "rule of reason". The rule of reason requires a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the agency's decision.²⁵ The Board does not rule on the wisdom of the proposal but rather on "whether the FEIS gave [the decision makers] sufficient information to make a reasoned decision."²⁶ As for the DNS, the Board similarly applies the "clearly erroneous" standard of review.²⁷ In addition, in any action involving an attack on the adequacy of an environmental document the decision of the governmental agency shall be accorded substantial weight.²⁸

IV. PRELIMINARY MATTERS, ABANDONED ISSUES AND ORDER OF DISCUSSION

Restated and Coordinated Legal Issues

*4 Prior to the prehearing conference the Presiding Officer distributed a matrix of the legal issues presented in the six petitions for review (PFRs) and asked the petitioners to simplify and organize the issues. The petitioners subsequently provided a set of Restated and Coordinated Legal Issues, incorporating and referencing all the issues in the PFRs. The Presiding Officer modified the restated issues slightly to best reflect the original PFRs. Thus the Board's Prehearing Order sets forth ten issues which reflect both a consolidation and modification of the issues presented by the petitioners in the six petitions for review. The restated issues are attached as Exhibit A to this Order and are the issues addressed in these coordinated cases.

Abandoned Issues

Petitioners in their opening briefs and at hearing expressly abandoned the following issues:

- Legal Issue 2, except for a reference to RCW 36.70A.070(6)(b),²⁹
- Legal Issue 4.c, and
- Legal Issue 9.³⁰

The County and BSRE contend that other claims have been abandoned. The Board addresses these assertions of abandonment within the context of the discussion and analysis that follows.

Order of Discussion

Recognizing that the legal issues present significant overlaps, and that the *Shoreline III* and *Shoreline IV* petitions challenge different ordinances, the Board discusses the issues in the order presented in the Restated and Coordinated Legal Issues. In doing so, the Board is cognizant that it is empowered to decide only issues “presented to the board in the statement of issues, as modified by any prehearing order.”³¹ However, the Board is not required to decide each issue in isolation from the whole of the PFR. Nor does the Board read individual provisions of the statute as stand-alone propositions, unrelated to one another.³²

V. THE CHALLENGED ACTIONS and STATEMENT OF FACTS³³

Point Wells is a 61-acre site located on Puget Sound in unincorporated Snohomish County immediately north of the King/Snohomish County boundary. The site is bordered by two-third mile of Puget Sound shoreline on the south and west. The upland side is bordered by a steep bluff up to 220' high. The Town of Woodway in Snohomish County, with 1200 residents, is located at the top of the bluff.³⁴ The City of Shoreline, with 53,000 residents, is across the King County boundary to the south. The only present or anticipated vehicle access to Point Wells is Richmond Beach Drive - a neighborhood road in Shoreline. A railroad line bisects the site running north and south.

Point Wells has been the site of petroleum-based industrial use for 100 years. An oil refinery, tank farm, and asphalt plant have left a legacy of heavy contamination.³⁵ Natural streams have been buried or diverted, marshes drained or filled, and the land paved over.

*5 For the past decade, Snohomish County, the adjacent jurisdictions and successive owners of the property have discussed potential remediation and change of use for Point Wells. By virtue of its single ownership, waterfront location, and 180-degree views over the Sound to Whidbey Island and the Olympic Mountains, the site presents a unique opportunity for creation of a mixed-use residential/commercial community. BSRE presents an attractive proposal modeled on successful development in Vancouver BC. BSRE envisions lively and dense urban development incorporating innovative sustainability measures for reduced energy use, walkability, stream daylighting, shoreline restoration, water reuse and recycling, and the like.³⁶

However, redeveloping this contaminated site as a mixed-use urban community presents major challenges directly related to GMA planning requirements. As an unincorporated area, Point Wells is within Snohomish County's planning authority. The site is a potential annexation area for two municipalities — Woodway and Shoreline — each of which has a different vision than Snohomish County. In the past decade, the matter has been brought to the GMHB three times, with one appeal reaching the State Supreme Court.³⁷

Prior to the action challenged here, Snohomish County's comprehensive plan designated the property Urban Industrial.³⁸ In 2005 the County amended its comprehensive plan by adopting policy LU 5.B.12: Within the Southwest UGA, parcels designated Urban Industrial [Point Wells] shall be considered for future redesignation from Urban Industrial to Mixed Use/Urban Center designation upon receipt of necessary studies addressing all permitting considerations such as site development, environmental impacts and issues.

Woodway and Shoreline also have comprehensive plan provisions expressing their preferences for Point Wells redevelopment. Woodway includes Point Wells as a Municipal Urban Growth Area (MUGA), and its comprehensive plan includes a vision statement and land use alternatives for the area.³⁹ Shoreline refers to Point Wells as a Future Service and Annexation Area, and has adopted a subarea plan.⁴⁰ Both municipalities support mixed-use redevelopment, but not at Urban Center intensities.

A major obstacle is limited access. Point Wells lacks highway access. Due to the steep bluffs upland, the only way to access the property by land is through the City of Shoreline from the south via Richmond Beach Drive, a two-lane street that dead-ends at Point Wells. The nearest major highway is State Route 99, approximately 2.5 miles east, via Richmond Beach Drive and N. 185th Street in Shoreline. The DSEIS discloses the limitations of the street capacity of Richmond Beach Drive⁴¹ and of the further roads and intersections that form the links to the highway.⁴² The DSEIS points out the bluff to the east and northeast limits the potential for additional access roads.⁴³

*6 Point Wells also lacks transit service.⁴⁴ Express transit service, whether offered by King County Metro or Community Transit, is 2.5 miles away, on State Route 99, and Sound Transit's proposed light rail line is beyond — on Interstate 5.⁴⁵ While the rail line through Point Wells provides commuter service between Seattle and Everett, Sound Transit, which operates commuter rail, has no present plan to provide a Point Wells station.⁴⁶ Even if the King County Metro bus line which now terminates half a mile from Point Wells were extended to Point Wells in the future to serve the anticipated population,⁴⁷ this would not be express or high-capacity service.

The County ordinances challenged here amend County comprehensive plan policies and land use map to allow the designation of Point Wells as an Urban Center - Ordinance Nos. 09-038 and 09-051 — and amend County development regulations for Urban Centers to accommodate the Point Wells designation - Ordinance Nos. 09-079 and 09-080.

VI. LEGAL ISSUES AND ANALYSIS

LEGAL ISSUE 1

The Prehearing Order states Legal Issue 1 as follows:

1. [SHORELINE III and IV] Did Snohomish County Ordinances 09-038, 09-051, 09-079, and 09-080 (collectively, the "Ordinances") fail to comply with RCW 36.70A.070, because they are internally inconsistent with Snohomish County GMACP/GPP, Goal LU 2, Policy LU 3.A.2, Policy LU 3.A.3, Glossary Appendix E, LU Policy 3.B.1 - 2, and provisions in the GMACP/GPP that establish access to high capacity transit as a criterion for designation as an Urban Center? If so, are the Ordinances invalid?

This issue was raised by all three petitioners and goes to the heart of their challenge to both the County's comprehensive plan and development regulations amendments.

Applicable Law

The preamble to RCW 36.70A.070 provides:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

Discussion and Analysis

At the outset, the Board notes RCW 36.70A.070 requires internal consistency in an adopted *comprehensive plan*, including its mandatory elements. This section of the GMA does not reference development regulations. The Board has previously ruled amendments to development regulations are not properly the subject of a challenge based on RCW 36.70A.070.⁴⁸ Consistency of development regulations with comprehensive plans is mandated in other GMA provisions. In *Aagaard III v. City of Bothell*, the Board stated:

... Petitioners here have cited to the wrong section of the GMA in stating their consistency issue. Consistency between a plan and development regulations is required by RCW 36A.70.130(1) and .040, not by .070, which pertains to internal consistency within a plan.⁴⁹

*7 Accordingly, the portions of Legal Issue 1 challenging the *Shoreline IV* ordinances based on RCW 36.70A.070 are dismissed.

· LU 3.A.3 — Urban Centers Locational Criteria

Section LU 3.A of the County Comprehensive Plan sets forth the County's adopted characteristics and criteria for Urban Centers.⁵⁰ The locational criteria are provided in LU 3.A.3:

Urban centers shall be located adjacent to a freeway/highway and a principal arterial road, and within one-fourth mile walking distance from a transit center, park-and-ride lot, or be located on a regional high capacity transit route.

The Petitioners assert that designating Point Wells as an Urban Center is inconsistent with the LU 3.A.3 locational criteria, which they read as requiring **both** highway adjacency and transit access, provided by a transit center, park-and-ride, or regional high capacity transit route. To support their construction of LU 3.A.3, Petitioners cite other comprehensive plan provisions, including the incorporation of PSRC Vision 2040 principles in Objective LU 3.A and the policy requirement for transit access in LU 3.A.2. Petitioners further argue the characteristics of the County's other designated Urban Centers and the practical realities of Urban Center location support their construction of LU 3.A.3.⁵¹

The County contends the Urban Center locational criteria are met by location ““on a regional high capacity transit route,” regardless of present or planned transit access at that location. The County asserts that the words “be located” provide the parallelism in LU 3.A.3: an Urban Center should **either** “be located” on a freeway/highway with transit

access provided by a transit center or park-and-ride within walking distance “or be located” on a regional high capacity transit route.

Urban centers shall **be located** adjacent to a freeway/highway and a principal arterial road, and within one-fourth mile walking distance from a transit center, park-and-ride lot, **or be located** on a regional high capacity transit route.

The County contends Point Wells can be designated an Urban Center by virtue of the Sound Transit commuter rail line that runs through the property regardless of whether a rail station is provided: Point Wells is “on a regional high capacity transit route.”⁵²

Petitioners urge that LU 3.A.3 must be read to provide two locational criteria: highway adjacency and transit access. They contend the parallelism in the policy is indicated by the “and” which links (a) highway adjacency and (b) various options for transit access.

Urban Centers shall be located adjacent to a freeway/highway and a principal arterial road **and** within one-fourth mile walking distance from a transit center, park-and-ride lot, or be located on a regional high capacity transit route.

*8 The Board finds the language of LU 3.A.3 is not self-explanatory. Neither reading of the provision is grammatically clear, as even the County acknowledges.⁵³ Are the criteria disjunctive — located on a highway or on a transit route — as the County contends? Or are the criteria conjunctive — located on a highway and with transit access, as Petitioners argue?

The County contends that its reading of LU 3.A.3 is supported by the evolution of the wording of LU 3.A.3 and asserts that the Board should defer to the County's construction of its own comprehensive plan policies. While the Board concludes the County's interpretation of LU Policy 3.A.3 is rather strained, deference to its interpretation is appropriate.⁵⁴

· The County's Other Urban Centers

Petitioners point out that Point Wells is the County's only Urban Center without either transit access or the existing road infrastructure to support high-capacity vehicle access.⁵⁵ The Petitioners contend Snohomish County's other Urban Center designations support the argument that the LU 3.A.3 locational criteria require freeway/highway adjacency as well as transit services.⁵⁶ Indeed, each of the other five designated Urban Centers is identified and named by highway intersection.⁵⁷ Thus, each of the County's Urban Centers — except Point Wells - is located “adjacent to a freeway/highway and a principal arterial road.”⁵⁸ The Point Wells Urban Center, by contrast, is at the dead-end of a narrow road through a residential neighborhood. While the Board acknowledges the discrepancy between Urban Centers located on arterials providing high vehicle trip capacity and Point Wells, with its one neighborhood access road,⁵⁹ the Board does not find this comparison determinative in light of the required deference to the County's interpretation of LU 3.A.3.

Nevertheless, having accepted that interpretation, in order to determine consistency the Board must read the Goals, Objectives and Policies of the County's Comprehensive Plan addressing Urban Centers as a whole.⁶⁰

· Access to Roads and Transit

The Board notes, first, Policies LU 3.A.2 and LU 3.A.3 clearly envision that urban centers will have ready access to transportation.

Policy LU 3.A.2

Urban Centers shall be compact (generally not more than 1.5 square miles), pedestrian oriented areas within designated Urban Growth Areas with *good access to higher frequency transit and urban services*. ... These locations are intended to develop and redevelop with a mix of residential, commercial, office and public uses at higher densities, *oriented to transit* and designed for public circulation. Urban Centers should also include urban services and reflect high quality urban design. Urban Centers shall emphasize the public realm (open spaces, parks and plazas) and create a sense of place (identity). Urban Centers will develop/redevelop over time and may develop in phases.

*9 Policy LU 3.A.3:

Urban centers shall be located adjacent to a freeway/highway and a principal arterial road, and within one-fourth mile walking distance from a transit center, park-and-ride lot, or be located on a regional high capacity transit route.

The ready access policy would be achieved by the first part of LU 3.A.3 as interpreted by the County as urban centers would be located adjacent to a freeway/highway and a principal arterial and be located within 1/4 mile walking distance from a transit center or park-and-ride lot.

However, the County urges the Board to view the second clause of LU 3.A.3 - ““located on a regional high-capacity transit route” - as a stand-alone urban-center criterion notwithstanding the lack of existing or planned access to that route. Such an interpretation ignores Policy LU 3.A.2’s reference to “good access” and leads to an absurd result: an urban center with limited transportation access. Such a center would *not* be located on a freeway/highway and a principal arterial, it would *not* be within 1/4 mile walking distance of a transit center or park-and-ride lot and would *have no access* to higher frequency transit, *although it would be located* on a regional high-capacity transit route. Mere adjacency to an inaccessible transit corridor cannot satisfy the LU 3.A.2 Urban Center requirement for “good access to higher frequency transit.”

Woodway’s Prehearing Brief states the question succinctly:

The Town acknowledges that, within certain limits, the County is free to create an Urban Center designation and define it in any way the County Council thinks best. However, having done so, the County is obligated to follow its own regulations and only designate property on the FLUM that actually meets the designation and criteria established in the text. Obviously, there is a certain amount of discretion and judgment in this decision, but there are limits. This case presents a test of those limits.⁶¹

The Board looks to other County comprehensive plan language concerning Urban Centers. The Board finds three references that speak of Urban Centers as “on” or “along” a high capacity transit route or corridor, without specifying that the service must be provided and accessible.⁶² However, the introductory text and other Urban Centers policies clearly support the Board’s understanding that a transit requirement includes access and linkages. The subchapter begins: [Urban centers are areas where] significant population and employment growth can be located, a community-wide focal point can be provided, and the *increased use of transit*, bicycling and walking can be supported. These centers are intended to be compact and centralized living, working, shopping and/or activity areas *linked to each other by high capacity or local transit*. The concept of centers is pedestrian and *transit orientation* with a focus on circulation, scale and convenience with a mix of uses.⁶³

*10 Thus the policy text makes clear transit *usage* and *linkages* are essential characteristics of Urban Centers.

LU Policy 3.A.6 underscores the necessary provision of both transit and roads in planning for Urban Centers.

LU Policy 3.A.6

Desired growth within Urban Centers shall be accomplished through application of appropriate zoning classifications, *provision of necessary services* and public facilities, *including transit*, sewer, water, stormwater, *roads* and pedestrian improvements, parks, trails and open space and protection of critical areas. The county will identify and apply methods to facilitate development within designated urban areas, including *supportive transit*, parks, *road* and non-motorized improvements. (Emphasis supplied)

In Policy LU 3.A.6, the County sets itself the task of identifying and applying methods to facilitate the necessary transit and road improvements to support development in Urban Centers, thus, again, recognizing that both highway and transit access are essential to the high-density mixed-use communities designated as Urban Centers.⁶⁴ Policy LU 3.A.6 links back to Policy 3.A.2 and its requirement that “Urban Centers shall be compact ... pedestrian oriented areas ... with *good access to higher frequency transit and urban services.*”

In sum, the Board finds the County's Urban Center policies as a whole require ready access to both the road system and transit services. Mere location on an inaccessible transit route is not sufficient and not consistent with these policies.

· Consistency with Vision 2040

The Board's conclusion is further buttressed by the language of Comprehensive Plan Objective LU 3.A which establishes the intention that Urban Center planning must be consistent not only with the Comprehensive Plan policies, but also with Vision 2040. While the County argues the Petitioners raised no allegation of inconsistency with Vision 2040, the Board disagrees. Petitioners specifically alleged inconsistencies existed between provisions of Ordinance 09-038 and 09-051 and the County's Comprehensive Plan provisions that establish access to high capacity transit as a criterion for Urban Center designation.

Consistency with Vision 2040 when planning for Urban Centers is explicitly incorporated into the County Comprehensive Plan by Objective LU 3.A.

Objective LU 3.A:

Plan for Urban Centers within unincorporated UGAs consistent with Vision 2040 and the CPPs.

Puget Sound Regional Council (PSRC) is the multi-county agency responsible for coordinated land use and transportation planning for the four Central Puget Sound counties. PSRC's Vision 2040 regional plan⁶⁵ constitutes a ““multicounty planning policy” for the four-county region pursuant to RCW 36.70A.210(7). Vision 2040 — and its predecessor Vision 2020 — identify a limited number of regional growth centers for special concentrations of population and/or employment as a way of focusing public infrastructure and transportation expenditures.

*11 Vision 2040 emphasizes the development of “a highly efficient transit system linking major centers.” The plan designates over two dozen regional growth centers. Three regional growth centers are in Snohomish County, two located along I-5 in Lynnwood and Everett, a third on I-405 at Bothell-Canyon Park. Under Vision 2040, the regional growth centers “focus growth within already urbanized areas” and “provide the backbone for the region's transportation network.”⁶⁶

Vision 2040 includes as one of its “overarching goals” a focus on urban growth in transit oriented communities.⁶⁷ More specifically, Vision 2040 includes the following language:

Centers create environments of *improved accessibility and mobility-especially for walking, biking, and transit-and, as a result, play a key transportation role as well. Centers also provide the backbone for the region's transportation network. By developing a highly efficient transportation system linking major centers, the region can take significant steps to reduce the rate of growth in vehicle miles traveled, while a cop accommodating a growing population and an increase in jobs.*⁶⁸

Petitioners argue persuasively that the Point Wells Urban Center doesn't meet Vision 2040 goals for urban center development. Point Wells has no present or planned transit access, and there is no transportation linkage — either by highway or transit or ferry — to the regional network.

The Board has had previous occasion to assess the relationship between Snohomish County's designated Urban Centers and the Urban Center designations in PSRC's Vision 2020. In the case of *Bothell et al Snohomish County*,⁶⁹ the City of Lynnwood asserted the County's expansion of a County-designated Urban Center in close proximity to Lynnwood's City Center, a PSRC-designated ““regional growth center,” was inconsistent with PSRC's Vision 2020. The Board found PSRC's “regional growth centers” are large, important, sub-regional hubs as contrasted with the County's “urban center” zones. As defined by PSRC: “The term ‘regional growth center’ is used to differentiate centers that are designated for regional purposes from those that have a more local focus.” *Id.* The Board concluded the County's Urban Center designations, having “a more local focus,” were not required to be identical to the PRSC “regional growth centers.” Thus, as the Board held in the *Bothell* decision,⁷⁰ it is not inconsistent with the Vision 2040 policies for Snohomish County to designate as one of its “urban centers” an area of the unincorporated UGA that does not meet the criteria for a PSRC “regional growth center.”

However, this case presents a different question: how should the County's Urban Center land use policies be construed in light of the County's stated objective of consistency with Vision 2040? The Board reasons that the PSRC goal of using development in “centers” to support a “highly efficient transit system linking major centers” is highly relevant to construction and application of the County's Urban Center policies. The Board takes official notice that regional transit services are governed by their own complex statutes and intergovernmental agreements. Establishing regional priorities for initial investment and long-term service is an intensive process. Thus Urban Centers consistent with Vision 2040 should be linked to accessible transit service on the regional network.

*12 BSRE generally contends its project will, over time, meet the transit access criteria of LU 3.A.2 and LU 3.A.3. BSRE points out transit agencies will not plan to provide additional service until population growth is assured.⁷¹ BSRE states it is negotiating with King County Metro to extend local bus service 0.5 miles into Point Wells, where BSRE proposes to provide a transit center. Metro's present routes provide all-day half-hour service to Northgate and peak hour runs to downtown Seattle.⁷² BSRE also provides a letter from Sound Transit expressing “interest” in serving Point Wells if the developer funds construction of the commuter rail station.⁷³ However, it is undisputed as of today, there is no regional transit solution in the plans of any of the transit agencies to serve an additional population of 6000 at Point Wells.⁷⁴

The Board does not find BSRE's assurances persuasive. The Board agrees with petitioners that a "highly efficient transportation system linking major centers" is not satisfied by providing van pools to a Metro park-and-ride two and a half miles away. Nor is "high capacity transit" satisfied by an urban center on a commuter rail line without a stop. There is nothing efficient or multi-modal about an urban center designation that could result in an additional 12,860 car trips per day through a two-lane neighborhood street, or that relies for high-capacity transit on an unusable commuter rail line and van pools. The Board concludes the County's construction of LU 3.A.3 is not consistent with LU Objective 3.A and Vision 2040.

In light of the foregoing facts and arguments, the Board is left with "a firm and definite conviction that a mistake has been committed" in the County's designation of Point Wells as an Urban Center. The designation is inconsistent with the County's comprehensive plan land use policies concerning Urban Centers and thus does not comply with RCW 36.70A.070 (preamble). The County's action is clearly erroneous in light of the entire record before the Board.

Conclusion

The Board is persuaded the County's adoption of Ordinance Nos. 09-038 and 09-051 is **clearly erroneous** in that the designation of Point Wells as an Urban Center is internally inconsistent with the County's comprehensive plan provisions concerning Urban Centers. The County's action **does not comply** with RCW 36.70A.070 (preamble) which requires internal consistency. The Board remands the ordinances to the County to take legislative action to comply with the GMA as set forth in this order.

Petitioners' allegation that Ordinance Nos. 09-079 and 09-080 also violate RCW 36.70A.070 (preamble) is without merit and is **dismissed**.

LEGAL ISSUE 2

The Prehearing Order states Legal Issue 2 as follows:

2. [SHORELINE III] Did Snohomish County Ordinances 09-038 and 09-051 (collectively, the "Shoreline III Ordinances") fail to comply with RCW 36.70A.070 (preamble), (3), (6) and (8) as they apply to Point Wells, because they are not consistent with the GMACP elements related to capital facilities, transportation, parks/open space, and recreational facilities? If so, are the Ordinances invalid?

*13 This issue was raised by Shoreline and Save Richmond Beach and partially abandoned. In their consolidated prehearing brief, Shoreline and Save Richmond Beach expressly abandoned the portions of this issue that alleged inconsistency with elements of the County's comprehensive plan.⁷⁵ This part of Legal Issue 2 is **dismissed**.

One portion of Legal Issue 2 was included in the Petitioners' opening brief and not abandoned: consistency with the concurrency requirement in the mandatory transportation element - RCW 36.70A.070(6)(b).⁷⁶

Applicable Law

RCW 36.70A.070(6) sets forth mandatory requirements for the transportation element of a jurisdiction's comprehensive plan. Subsection (6)(b) provides:

After adoption of the comprehensive plan by jurisdictions required to plan ... local jurisdictions must adopt and enforce ordinances that prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan,

unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development

Discussion and Analysis

The Petitioners state:

The GMA's concurrency requirement serves as a bar to development that would cause the level of service on transportation systems to fall below the locally adopted standards.

The Board notes that the DSEIS identifies a number of intersections in Shoreline, Woodway and Edmonds where Point Wells' Urban Center development, without mitigation, is projected to result in traffic levels beyond LOS limits adopted by the respective municipalities, including several intersections that reach an F/F standstill.⁷⁷ The DSEIS identifies a number of possible mitigations, including roadway improvements, turn lanes and signalization, primarily in Shoreline, but also in Woodway and Edmonds.⁷⁸

However, the Petitioners have provided no authority for the proposition that the GMA creates a requirement for a planning jurisdiction to guarantee concurrency for facilities of neighboring jurisdictions. RCW 36.70A.070(6)(a)(iii)(B) requires each planning jurisdiction to adopt "level of service standards for all *locally-owned* arterials and transit routes." RCW 36.70A.070(6)(b) by its terms directs a local jurisdiction, having adopted its comprehensive plan (containing the mandatory transportation element and adopted LOS standards), to then enact and enforce ordinances prohibiting development approval if the development causes the level of service on a *locally owned transportation facility* to decline below the LOS standards adopted in the transportation element of the comprehensive plan. The Board concludes that the mandatory concurrency provisions for "locally-owned" facilities apply to facilities owned by the planning jurisdiction, not those owned by its neighbors.

*14 By contrast, RCW 36.70A.070(6)(a)(v) requires that the transportation element contain a sub-element which addresses intergovernmental coordination efforts, "including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions."⁷⁹ However, Petitioners did not raise the issue of compliance with this requirement and in fact, abandoned any challenge under RCW 36.70A.070(6)(a).

The Board finds and concludes that Petitioners have not carried their burden of demonstrating violation of RCW 36.70A.070(6)(b) or inconsistency of the *Shoreline III* ordinances with the mandatory GMA comprehensive plan transportation element.

Conclusion

Legal Issue 2 is dismissed in its entirety.

LEGAL ISSUE 3

The Prehearing Order sets forth Legal Issue 3 as follows:

3. [SHORELINE IV] Did Snohomish County Ordinances 09-079 and 09-080 (collectively, the "Shoreline IV Ordinances") violate RCW 36.70A.040(4) and RCW 36.70A.120 by adopting development regulations that were inconsistent with and failed to implement Snohomish County GMACP provisions in the "Centers" section of the LU

Urban Center Chapter, LU Policy 3.A.3, FLUM Center Designation “Urban Center,” and Glossary Appendix E, by designating Point Wells as an Urban Center zone where the location of Point Wells is not in proximity to existing or planned high capacity transit routes, transportation corridors, or public transportation stations?

This issue was raised by Shoreline and Save Richmond Beach.⁸⁰

Applicable Law

RCW 36.70A.040 is entitled “Who must plan — Summary of requirements — Development regulations must implement comprehensive plans.”

- Subsection (1) requires counties that meet certain criteria of population and growth rate to plan under GMA; Snohomish County plans under this GMA provision.
- Subsection (2) allows other counties to “opt in” to the GMA scheme.
- Subsection (3) requires counties originally required to plan under GMA (such as Snohomish County, to adopt comprehensive plans “and development regulations that are consistent with and implement the comprehensive plan ...”
- Subsection (4) requires “opt-in” counties to adopt comprehensive plans and consistent development regulations.

RCW 36.70A.120 provides:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan.

Discussion and Analysis

In referencing RCW 36.70A.040(4), the Petitioners cite to the wrong subsection of the GMA — a section applying to “opt-in” counties only. This provision does not create a duty for Snohomish County, which is not one of the “opt-in” counties.

***15** The Board by statute must limit its rulings to the issues presented in the prehearing order. RCW 36.70A.290(1) requires the petition for review to include “a detailed statement of issues presented for resolution by the board,” and specifies: “The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.”⁸¹ Thus the Board will not correct the Petitioners' citation. The Board finds that Petitioners have failed to meet their burden of demonstrating a violation of RCW 37.70A.040(4); this part of Legal Issue 3 must be dismissed.

The County contends that the Petitioners' consistency argument based on section RCW 36.70A.120 should be dismissed as abandoned, because their prehearing brief merely cites to .120 in the statement of Legal Issue 3 but contains no argument tied to section 120. The Board concurs.

WAC 242-02-570(1) provides in part "Failure ... to brief an issue shall constitute abandonment of the unbriefed issue."⁸² The Board has explained, "An issue is briefed when legal argument is provided."⁸³ It is not enough to simply cite the statutory provision in the statement of the Legal Issue.⁸⁴

In the present case, while Petitioners' briefing includes some argument about development regulation consistency under Legal Issue 1, neither in that section nor under Legal Issue 3 is there any argument or authorities based on RCW 36.70A.120. Therefore the Board finds and concludes that Petitioners' consistency challenge based on RCW 36.70A.120 was abandoned.

Conclusion

Legal Issue 3 is dismissed in its entirety.

LEGAL ISSUE 4

The Prehearing Order sets forth Legal Issue 4 as follows:

4. Did the Ordinances fail to comply with RCW 36.70A.100 where:

a. TOWN OF WOODWAY: Point Wells is located within the Town's MUGA. The Town's Comprehensive Plan shows the property with an Industrial designation. The Ordinances are not coordinated or consistent with the Town's existing Comprehensive Plan.

b. CITY OF SHORELINE: The City of Shoreline Comprehensive Plan indicates a Mixed Use development with urban densities. However, the densities proposed in the challenged Ordinances far exceed the contemplation of the Shoreline Comprehensive Plan.

c. KING COUNTY: The Point Wells designation is not consistent with the transportation element of King County's GMACP. (See King County GMACP, Technical Appendix C, Transportation.)

If so, are the Ordinances invalid?

Inconsistency with King County's transportation plan was asserted by Save Richmond Beach, but this sub-issue was subsequently abandoned.⁸⁵ Woodway and Save Richmond Beach raise the issue of inconsistency with Woodway's plan, with Woodway arguing that inconsistency extends to the *Shoreline IV* ordinances. All three petitioners assert inconsistency with Shoreline's plan, with Woodway again arguing that inconsistency extends to the *Shoreline IV* ordinances.

Applicable Law

*16 RCW 36.70A.100 provides:

The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties and cities with which the county or city has, in part, common borders or related regional issues.

Discussion and Analysis

At the outset, the Board notes that RCW 36.70A.100 requires coordination and consistency of the *adopted comprehensive plans* of adjacent jurisdictions. This section does not reference development regulations. The Board has previously ruled that amendments to development regulations are not properly the subject of a Section .100 challenge.⁸⁶ Therefore Petitioners' challenge to the *Shoreline IV* ordinances based on RCW 36.70A.100 is **dismissed**.

The requirement of inter-jurisdictional coordination and consistency is a fundamental GMA objective. It is reflected in legislative findings stating ““citizens, communities, local governments and the private sector [should] cooperate and coordinate” in land use planning.⁸⁷ GMA Planning Goal II calls for cities and counties to “ensure coordination between communities and jurisdictions to reconcile conflicts” in developing their plans.⁸⁸ GMA requirements for adoption of County-wide Planning Policies (CPPs) are designed to provide a framework for city-county coordination.⁸⁹ The mandate of ““coordination and consistency” in RCW 36.70A.100 must be construed in this context.

· Woodway's Comprehensive Plan Policies for Point Wells

Point Wells is surrounded on three sides by the Town of Woodway and is within the town's designated Municipal Urban Growth Area (MUGA). The Town has planned for Point Wells for a number of years, beginning with a focused stakeholder and citizen process in 1999.⁹⁰ Currently, Woodway has adopted an industrial designation for Point Wells. Its land use policies call for low-density urban residential land use on the upper bluff and the continuation of the industrial designation on the waterfront area west and south of the rail line.⁹¹ The Town's policies seek “a collaborative process to achieve a consensus among the governmental agencies” prior to any mixed-use development of Point Wells.⁹²

However, the Vision Statement in Woodway's comprehensive plan clearly anticipates redevelopment for Point Wells. In Woodway's Vision Statement:

Point Wells is redeveloped for a combination of desired mixed land uses on the waterfront, a restored shoreline ecology, substantial public access, and recreational opportunities ... Beside being a unique resource for the community, Point Wells is a regional attraction and a model of sustainable, accessible and appropriate shoreline redevelopment and upland conservation and neighborhood development.⁹³

*17 The Woodway plan continues: “Point Wells can potentially accommodate a large population,” and then raises observations and criteria related to annexation and impact on Town character and fiscal sustainability.⁹⁴ Woodway's comprehensive plan appendix includes a range of mixed-use scenarios for post-industrial development of Point Wells — from multi-family, to marina-centered commercial uses, to hotels, to single-family residential consistent with the low densities existing in the town — no more than four dwelling units per acre.⁹⁵

Notwithstanding the support in Woodway's plan for mixed-use at Point Wells, Woodway here argues any of its alternative scenarios for Point Wells redevelopment is “starkly different” from the scale and intensity of the County's Urban Center designation, which would allow 3,500 units housing more than 6000 residents.⁹⁶

· Shoreline's Comprehensive Plan Policies for Point Wells

The City of Shoreline, in King County, provides the only road accessing the Point Wells site. Shoreline therefore has a high level of interest in future development of Point Wells and has long included policies related to Point Wells

redevelopment in its Comprehensive Plan.⁹⁷ In 1998 Shoreline adopted a comprehensive plan that designated Point Wells as a potential annexation area (PAA).⁹⁸

Shoreline initiated a subarea planning process for Point Wells in April 2009. Shoreline invited participation from Snohomish County, Woodway, and BSRE's predecessor -Paramount. Shoreline circulated a draft Point Wells subarea plan envisioning less intense development than allowed by the County's proposed Urban Center designation.⁹⁹ Shoreline states the County declined to participate and thus failed to coordinate with Shoreline's subarea planning process.

One aspect of Shoreline's challenge may be summarily disposed of. Shoreline apparently argues the County's action is inconsistent with the City's subarea plan. Shoreline Subarea Plan Policy PW-12 states:

The maximum daily traffic that the City should permit emanating from or entering into Point Wells may not exceed 8,250 vehicle trips per day, nor reduce the City's adopted level of service standards for the Corridor at the time of application for development permits at Point Wells.¹⁰⁰

Shoreline points out that the County's Urban Center designation for Point Wells would generate 12,860 trips per day, based on the DSEIS.¹⁰¹ This would result in failing levels of service at nine Shoreline intersections.¹⁰² Despite this conflict with the City's policies, Shoreline says, the County refused to coordinate its planning process with Shoreline's subarea planning. In particular, Shoreline asserts the County acted unilaterally in adopting the Point Wells development regulations without first coordinating planning and ensuring funding for necessary capital improvements in adjacent jurisdictions.¹⁰³

***18** The Board finds the County Council began its consideration of comprehensive plan amendments for redesignation of Point Wells in June, 2009.¹⁰⁴ Shoreline began its subarea planning process in April 2009, providing the County a draft of its Subarea Plan and inviting County participation.¹⁰⁵ The County adopted the Point Wells Urban Center designation on August 12, 2009. Shoreline adopted its subarea plan for Point Wells on April 19, 2010 and the County adopted the Point Wells development regulations on May 12, 2010.¹⁰⁶ Thus to the extent Shoreline challenges the *Shoreline III* ordinances as inconsistent with its Subarea Plan, the Subarea Plan was not adopted until well after the County enacted its Urban Center designations for Point Wells. To the extent Shoreline challenges the Point Wells development regulations, such challenge is not within the scope of RCW 36.70A.100.

· Coordination and Consistency - Woodway

To review the challenge raised by Woodway, the Board looks first to the GMA provisions concerning consistency *within a county*. The framework for coordinated planning between a county and cities within that county is established by the county-wide planning policies required under RCW 36.70A.210, which provides:

This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100.¹⁰⁷

County-wide planning policies "shall at a minimum address ... (f) policies for joint county and city planning within urban growth areas."¹⁰⁸ Thus a County's CPPs establish the scope and intent of interjurisdictional coordination and joint planning necessary to demonstrate compliance with RCW 36.70A.100.¹⁰⁹

Consistent with RCW 36.70A.210, the Board has applied countywide planning policies to disputes within a county. In 2007 the Board decided reciprocal challenges by the cities of Seattle and Burien under RCW 36.70A.100.¹¹⁰ Seattle and Burien had each designated the same area of unincorporated King County as a potential annexation area (PAA). King County intervened in both cases to argue that its Countywide Planning Policies provide a process for resolving contested PAAs.¹¹¹ The Board declined to find either city's action violative of the coordination required by RCW 36.70A.100. Rather, the Board deferred to King County's process, reasoning that deferral would foster the collaboration required by the GMA. The Board concluded:

It is now up to Seattle and Burien, with assistance from the County, to assess their respective abilities to provide adequate governmental services and facilities to these unincorporated areas.¹¹²

Thus Countywide Planning Policies will be applied in resolving inter-jurisdictional disputes about comprehensive plan consistency *within a county*.

*19 As to Snohomish County, the Board has previously determined Snohomish County-wide Planning Policies (CPPs) require advisory consultation through an inter-agency committee — Snohomish County Tomorrow (SCT) — and provide for binding joint-planning by inter-local agreement. In *Bothell v Snohomish County*,¹¹³ the cities of Mill Creek and Bothell protested the County's rezoning of lands within their respective MUGAs at higher densities than the plans of either city contemplated. The Board dismissed the charge of inter-jurisdictional inconsistency, saying: The GMA does not prescribe a particular process for the county/city collaboration and consistency that is promoted by the statute. County-wide planning policies provide only a framework for city/county planning consistency, unless the parties in a particular county agree to a more binding arrangement. RCW 36.70A.210(1). In Snohomish County, the county-wide planning policies establish Snohomish County Tomorrow as a merely advisory body (CPP JP-4) and apparently contemplate that any binding city-county joint planning be established by interlocal agreement. (CPP JP-1) None of the parties point to any inter-local agreement by which the County has agreed to give Bothell or Mill Creek a deciding voice as to zoning in their respective MUGAs.

Because there was no inter-local agreement under the CPPs, the Board concluded the County's upzoning in the Bothell and Mill Creek MUGAs did not violate RCW 36.70A.100.

In the present matter, Woodway does not allege inconsistency with CPPs or that a CPP has been violated. The County submitted its Point Wells proposal to SCT for consultation as required.¹¹⁴ There is no inter-local agreement between Snohomish County and Woodway giving the Town a deciding voice as to redevelopment of Point Wells. The Board finds and concludes Woodway has not demonstrated the County's action violates the CPPs which constitute the framework for consistency between a county and its cities. Woodway's claims based on RCW 36.70A.100 are **dismissed**.

· Coordination and Consistency — Shoreline

Shoreline is in King County and not subject to Snohomish County's CPPs. RCW 36.70A.100 requires Snohomish County's comprehensive plan "shall be coordinated with, and consistent with" the comprehensive plans of adjacent cities. Shoreline claims the County has refused to engage in the City's subarea planning process and thus has failed to *coordinate* its plans.

In determining whether plans of adjacent jurisdictions are *coordinated*, the Board may look to the record of inter-agency communication and consultation in adoption of the challenged plan provisions. In *SOS v City of Kent*,¹¹⁵ the Board

found the City had sought comment from adjoining jurisdictions on its urban separators policies and received specific comment from King County; no violation of RCW 36.70A.100 was shown. Likewise in *Kap II v City of Redmond*,¹¹⁶ the record indicated the City of Redmond was working with King County transportation staff on a comprehensive corridor study and was involving the community beyond the city limits in its roadway extension planning process; the Board found the RCW 36.70A.100 requirement of coordination was satisfied.

*20 In the present case, the record fully demonstrates that Snohomish County's process for re-designation of Point Wells provided opportunity for input from both Shoreline and Woodway. For example, the DSEIS contains an extensive section on compatibility of designating Point Wells an Urban Center with the comprehensive plans of Woodway and Shoreline.¹¹⁷ Further, the County asserts it accepted a number of suggestions from the two municipalities and incorporated them into its ordinances.¹¹⁸ Shoreline complains the County refused to participate in the City's sub-area planning process.¹¹⁹ The Board does not find this objection persuasive in light of the substantial contact and communication between the jurisdictions concerning Point Wells, which the Board takes as sufficient evidence of *coordination*.

The more cogent question is whether the County's action is *consistent* with the Shoreline comprehensive plan. The Board has defined consistency to mean ““provisions are compatible with each other — they fit together properly. In other words, one provision may not thwart another.”¹²⁰ Petitioners argue the sheer scale of development contemplated at Point Wells under the Urban Center redesignation is inconsistent with the comprehensive plans of both Shoreline and Woodway.¹²¹

The County points to the *Bothell* decision where the Board rejected the cities' argument that RCW 36.70A.100 consistency requires the County to adopt zoning regulations the same as or approved by an adjacent city. In *Bothell* the Board ruled “the cities do not have the authority to dictate specific development standards outside their borders”¹²² The Board relied on the reasoning of *MT Development LLC, et al. v. City of Renton*,¹²³ where the Court of Appeals ruled that Renton had no authority to impose its comprehensive plan or zoning outside its city limits. The Board in *Bothell* concluded the GMA principle of inter-jurisdictional consistency does not give cities the authority to impose their urban density and design criteria beyond their boundaries.

The present matter is distinguishable, of course, because Woodway and Shoreline are not directly seeking to enforce their differing proposed land use designations for Point Wells. Rather, they are demanding consistency that acknowledges the limits of their capacity to plan for and absorb the impacts of adjacent densities in compliance with the GMA.

The Board concludes that the requirement for inter-jurisdictional coordination and consistency in RCW 36.70A.100 does not require Snohomish County to adopt land use designations or zoning regulations in the unincorporated UGA that are the same as or approved by an adjacent municipality. Inter-jurisdictional consistency does not give one municipality a veto over the plans of its neighbor.

*21 However, in the unique circumstances of this case, the County's action does not comply with RCW 36.70A.100. Here, substantial evidence in the record demonstrates the Point Wells Urban Center redesignation makes Shoreline's plan non-compliant with the GMA, as Shoreline has no plans or funding for the necessary road projects to maintain the level of service standards which it has adopted pursuant to GMA mandates.¹²⁴ While the DSEIS identifies possible future road capacity mitigations, Shoreline's existing capital facilities and transportation plans are at present rendered inadequate. The only “mitigation” for this inconsistency in capital planning, as proposed in the FSEIS, is: “The affected jurisdictions could meet to determine transportation strategies.”¹²⁵

As the *Chevron* court noted, consistency as defined by the Board means ““provisions are compatible with each other — they fit together properly. In other words, one provision may not thwart another.”¹²⁶ Here, Shoreline's capital facilities planning and level of service standards are thwarted by the Point Wells Urban Center designation.¹²⁷ The lack of compatibility is clearly demonstrated in Shoreline's scramble to re-analyze the traffic and safety capacity of its impacted roadways and to estimate costs for necessary improvements.¹²⁸ Shoreline's analysis concludes four intersections reach LOS F and two reach LOS E by 2025 with build-out of Point Wells.¹²⁹ Shoreline estimates mitigation requirements will cost \$33.4 million.¹³⁰ Shoreline's adopted capital facilities plans and funding are not compatible with Snohomish County land use policies that create these unplanned requirements.

The Board notes the Point Wells Urban Center development regulations require construction of an internal road network but do not contain requirements ensuring necessary improvements to external intersections and roads necessary to access the development, deferring these decisions to the permit process. The GMA requires capital facilities and transportation planning *at the same time* as land use designations. Where, as here, the capital planning of necessity involves adjacent jurisdictions, RCW 36.70A.100 mandates that the plans of those jurisdictions be consistent. As respects the City of Shoreline, in the absence of interlocal agreements or other secure commitments that can be incorporated in its planning documents, the Board is left with a **firm and definite conviction that a mistake has been made.**

Conclusion

The Board finds Woodway has not carried its burden of demonstrating a violation of RCW 36.70A.100, in that no violation of Snohomish County CPPs or breach of an inter-local agreement is in evidence. The Board finds and concludes Petitioners have **failed to carry their burden** in demonstrating the County's action violated RCW 36.70A.100 with respect to the Town of Woodway.

***22** As to Shoreline, the Board finds the County's adoption of the challenged ordinances violates RCW 36.70A.100 by making Shoreline's Comprehensive Plan inconsistent with GMA requirements for capital facilities and transportation planning. The Board concludes the County's adoption of Ordinance Nos. 09-038 and 09-051 was **clearly erroneous** and **does not comply** with RCW 36.70A.100. The Board remands the ordinances to the County to take legislative action to comply with the GMA as set forth in this order.

LEGAL ISSUE 5

The Prehearing Order sets forth Legal Issue 5 as follows:

5. [SHORELINE III] Did the Shoreline III Ordinances fail to comply with RCW 36.70.110(3) and (4) as they apply to Point Wells because they designate urban growth in an area not adequately served by public facilities and services, and did not acknowledge, given the realities of access and proximity, that Shoreline and/or Woodway are the units of local government most appropriate to provide urban services?

This legal issue is raised by Shoreline and Save Richmond Beach.

Applicable Law

RCW 36.70A. 110(3) and (4) provide, in pertinent part:

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed

public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas

(4) In general, cities are the units of government most appropriate to provide urban governmental services.

Discussion and Analysis

It is well settled that the phased location of urban growth in RCW 36.70A.110(3) is advisory, not mandatory, as indicated by the word “should” rather than “shall.”¹³¹ In *Spokane County v. City of Spokane*,¹³² the Court of Appeals explained this statutory provision “*recommends* where urban growth should be located and who should provide governmental services to those areas.”¹³³ The Board has indicated growth phasing is an option which is available to address the need for infrastructure concurrency, but is not a mandate.¹³⁴ Thus urban growth may be located (a) where urban services are already available, (b) where there is already some urban development and necessary urban services will be provided by public or private sources, and (c) in the remaining portions of the urban growth areas.

Similarly, the language of RCW 36.70A.110(4) does not impose a mandate. It provides: “*In general*, cities are the units of government *most appropriate* to provide urban services.” Petitioners have cited no authority for asserting the County is required to designate a city to provide urban services as a condition for a comprehensive plan amendment in the urban area.

***23** The Board concludes the Petitioners have not carried their burden of proof in demonstrating a violation of RCW 36.70A.110(3) or (4).¹³⁵

Conclusion

Legal Issue 5 is dismissed.

LEGAL ISSUE 6 — GMA Goals

The Prehearing Order sets forth Legal Issue 6 as follows:

6. Did the Ordinances fail to be guided by RCW 36.70A.010 and RCW 36.70A.020 (1) [compact urban development], (3) [transportation], (9) [parks], (11) [coordination with neighboring jurisdictions], and (12) [provision of capital facilities and services]? If so, are the ordinances invalid?

These issues are generally raised by all Petitioners in both their *Shoreline III* and *IV* PFRs, except that Woodway raises no challenge concerning Goal 9.

Applicable Law

Legislative Findings

RCW 36.70A.010 articulates legislative findings that underpin the GMA and provides, in relevant part:

The legislature finds that uncoordinated and unplanned growth ... pose a threat to the environment, sustainable economic development, and the health, safety and high quality of life enjoyed by residents of this state. *It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning.* (Emphasis supplied)

It is well-settled that statements of legislative intent, though codified in the statute, do not create enforceable mandates.¹³⁶ While legislative findings for the GMA do not provide a basis for a compliance challenge¹³⁷ they may assist the Board in interpreting and applying the mandates of the statute.¹³⁸ Thus, the Board takes note of these legislative findings as it construes in particular Goal 11 and RCW 36.70A.100.

· GMA Planning Goals — RCW 36.70A.020.

RCW 36.70A.020 sets forth the GMA planning goals. Those cited by Petitioners are the following:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Discussion and Analysis

*24 · Urban Growth and Public Facilities and Services — Goals 1 and 12

The GMA favors compact urban development, but establishes the principal that local government actions which increase urban growth must at the same time ensure the provision of urban services. Thus the first GMA planning goal is: Urban growth. Encourage development in urban areas *where adequate public facilities and services exist or can be provided in an efficient manner.*¹³⁹

The definitions in RCW 36.70A.030 indicate the intended public facilities and services:

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) “Public services” include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(18) “Urban governmental services” or “urban services” include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewers systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

Planning for urban development — whether through UGA expansions or intensification on existing urban lands — requires a 20-year plan to provide adequate urban services.¹⁴⁰ Such services are not always provided by the county or city that adopts the plan. The Board has made clear that county plans for urban areas to be served by non-county providers, “should at least cite, reference or otherwise indicate where such locational and financing information may be found that supports the County’s UGA designation and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period.”¹⁴¹

In *Suquamish II v Kitsap County*,¹⁴² the Board found that Kitsap County’s Capital Facilities Element (CFE) was deficient in planning services in the existing UGA, where the County had not yet planned sanitary sewer service for all of its pre-expansion UGA. On reconsideration, the Board entered a determination of invalidity, saying the County’s action “cannot be sustained if there is no provision for public facilities and services being adequate and available to support the planned-for development.”¹⁴³ In Kitsap County, sewer service to the unincorporated County UGA is provided, in some areas by cities, in other areas by sewer districts, and in some areas by a County utility. On remand, the County negotiated with cities and sewer districts to develop and adopt the necessary service plans to support the County’s action, and the Board found the plan compliant.¹⁴⁴

*25 The same principles apply to actions that increase development intensity in an urban area. In *Bothell v. Snohomish County*,¹⁴⁵ the Board invalidated County action redesignating urban land at higher densities, where adequate public road infrastructure was not available and had not been programmed to serve the site. The Board said: The heart of the GMA is the requirement for coordinated and comprehensive planning. Infrastructure must match and support urbanization. The costs of supplying urban services are to be taken into account *at the time* the urban growth boundary is extended or capacity is increased.¹⁴⁶

The GMA Guidelines explain:

The obligation to provide urban areas with adequate public facilities is not limited to new urban areas. Counties and cities must include in their capital facilities element a plan to provide adequate public facilities to all urban areas, including those existing areas that are developed, but do not currently have a full range of urban governmental services or services necessary to support urban densities.¹⁴⁷

In the case before the Board, adequate urban services for Point Wells are not currently available and not clearly planned. The DSEIS for the Point Wells Urban Center identifies serious deficiencies in road and intersection capacity on the one small road that accesses Point Wells, a road within the jurisdiction of the City of Shoreline and for which Shoreline has not programmed the necessary improvements.¹⁴⁸ No transit service is presently provided or planned by transit

agencies.¹⁴⁹ The water and sewer districts now serving the industrial uses on the property have not adopted plans for the infrastructure necessary to support a residential population of perhaps over 6000.¹⁵⁰ Police, fire, emergency, trash collection and other service vehicles all face the limitations of the single access road to the site. To support an Urban Center designation at Point Wells, Snohomish County needs to secure commitments from the agencies responsible for the necessary infrastructure and services; where applicable, service provision and facilities should be incorporated in the long-range plans of the responsible agencies.¹⁵¹

Goal 1 encourages urban growth “where adequate facilities exist or can be efficiently provided.” Goal 12 aims at ensuring necessary facilities and services are available when new development is ready for occupancy. BSRE projects construction on the first phase residential development at Point Wells may begin in 2016, with build-out through 2029.¹⁵² The Board notes that this is within the GMA’s 20-year horizon for coordinated land use and infrastructure planning.

The development regulations enacted by the County for the Point Wells Urban Center do not adopt a sufficient plan for infrastructure and services. Rather, the regulations establish a *process* for developing urban services commitments concurrently with approving project permit applications. Spokane County tested the same ‘wait and see’ approach to infrastructure mitigation in *Fenske v. Spokane County*,¹⁵³ arguing that “traffic impacts will be subsequently reviewed and mitigated during the site-specific land use approval process and will be required to meet traffic concurrency at that later point in time.” The Board found:

*26 By its very nature, capital facilities planning must be done at the PLAN approval stage as opposed to the PROJECT approval stage in order to effectively provide for the necessary lead time and identification of probable funding sources, and also to inform decision makers and the public as they consider the public infrastructure impacts of proposed comprehensive plan amendments.¹⁵⁴

BSRE asserts that its promises to fund the building of a commuter rail station, a transit center, and an on-site police and fire station — promises contained in its promotional PowerPoint and referenced in correspondence in the record — stand in for the governmental commitment required by the GMA.¹⁵⁵ BSRE and the County assert the facilities and services will be available when development is available for occupancy, as set forth in Goal 12. The Board is not persuaded. The Board agrees the compact urban development proposed for Point Wells would be very much in keeping with Goal 1 if urban services could be provided efficiently.¹⁵⁶ But on a record that proposes van pools to a Metro park-and-ride in lieu of high-capacity transit service, Goal 1 is not satisfied. While the Board assumes good faith on the part of the County (and Intervenor), good faith is not a substitute for identifying and providing for needed infrastructure and public services. “Trust us” is not a GMA plan.

The Board finds and concludes that the County’s actions were not guided by Goals 1 and 12.

· Transportation — Goal 3

Goal 3 reads:

Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

The Board notes that the language of the transportation goal informs the requirements for internal consistency discussed in Legal Issue 1, as well as the requirement for regional coordination addressed in Legal Issue 4.

In analyzing Legal Issue 1, the Board noted Point Wells' designation as an Urban Center fails to provide "good access to higher frequency transit and urban services" as contemplated in LU 3.A.2. In the *Bothell* case, the Board concluded that urban density not supported by adequate roads or transit thwarted Goal 3:

GMA Planning Goal 3 calls for "efficient multimodal transportation systems" that are "coordinated with county and city comprehensive plans." By enacting the McNaughton rezones, Snohomish County thwarts this goal because the County comprehensive plan allows more development density than the roads can handle GMA Goal 1 encourages urban growth "where adequate public facilities and services exist or can be provided in an efficient manner." RCW 36.70A.020(1), or than the TIP is scheduled to provide. Transportation systems are not coordinated with the comprehensive plan.¹⁵⁷

*27 Point Wells' isolated location makes it a poor candidate for "efficient multi-modal transportation systems." Petitioners' numeric calculations demonstrate the absurdity of relying on van pools, even as an interim solution.¹⁵⁸ Bus transit, ferry or water taxi service, or even commuter rail may eventually be possible but are not requirements in the County plan or regulations. Rather, as in *Bothell*, "the County comprehensive plan allows more development density than the roads can handle or than the TIP is scheduled to provide."¹⁵⁹

In response, BRSE contends the *Shoreline IV* regulations demonstrate the County was clearly guided by a multimodal transportation goal.¹⁶⁰ Although the County Urban Center policies only require location "on" a regional high capacity transit route, the newly-enacted code provisions require ½ mile walking distance to an existing or planned high-capacity transit station or vanpooling as an [interim]¹⁶¹ option. SCC 30.34A.085 provides:

SCC 30.34A.085 Access to Public Transportation

Business or residential buildings within an urban center either:

- (1) Shall be constructed within one-half mile of existing or planned stops or stations for high capacity transit routes such as light rail or commuter lines or regional express bus routes or transit corridors that contain multiple bus routes;
- (2) Shall provide for new stops or stations for such high capacity transit routes or transit corridors within one-half mile of any business or residence and coordinate with transit providers to assure use of the new stops or stations; or
- (3) Shall provide a mechanism such as van pools or other similar means of transporting people on a regular schedule in high occupancy vehicles to operational stops or stations for high occupancy transit.

Thus multimodal transportation is not merely encouraged but required, according to BSRE.

The Board is not persuaded. Goal 3 calls for "efficient multi-modal transportation." There is little *efficient* or *multi-modal* in the County's proposal to run up to 12,000 new trips a day through a neighborhood two-lane street or to serve the development with an inaccessible commuter rail line and van pools to distant park-and-rides.

Goal 3 calls for systems "based on regional priorities." Considerable evidence in the record here demonstrates that Urban Center development at Point Wells was not based on regional priorities for roads or transit. No facts in the record suggest improved highway access to Point Wells is a regional priority. Neither Community Transit nor King County Metro

includes Point Wells in its bus service plans. Sound Transit dropped a potential Point Wells station from its 2025 Plan for commuter rail.¹⁶²

Finally, Goal 3 calls for systems “coordinated with ... city comprehensive plans.” The record here demonstrates transportation needs for Point Wells are not coordinated with road improvement plans and financing in the impacted municipalities of Shoreline, Woodway, and Edmonds. Indeed, Shoreline argues persuasively that the County's designation of Point Wells as an Urban Center will make it impossible for Shoreline to comply with the GMA transportation and infrastructure requirements. Shoreline's recently-adopted Subarea Plan for Point Wells opposes any development of Point Wells that results in more than 8,250 vehicle trips per day,¹⁶³ while the SEIS projects Point Wells build-out could generate 12,860 trips per day.¹⁶⁴ The County's regulations for Point Wells development require construction of an internal road network but contain no requirement for highway improvements to provide access to the new Urban Center. As this access must come through Shoreline, coordination with the City's comprehensive plan is a necessity.

***28** The Board finds and concludes the County's actions were **not guided by Goal 3**. Adoption of the Ordinances does not provide efficient multi-modal transportation based on regional priorities and is not coordinated with city comprehensive plans.

· Parks — Goal 9

Goal 9 reads:

Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.¹⁶⁵

Shoreline contends the dense population of Point Wells, with egress only to the south through Shoreline, will place additional demand on parks and recreation facilities unlikely to be provided at Point Wells. Shoreline points out that the parks impact fees levied by Snohomish County under present regulations only fund parks facilities in Snohomish County, which Point Wells residents are less likely to use.¹⁶⁶

BSRE again asks the Board to rely on its “Plan Vision” PowerPoint¹⁶⁷ indicating its intent with respect to parks. Intervener's Plan Vision portrays a very large wooded area, 2/3 mile public beach and boardwalk, a floating public park on the pier, a daylighted stream, and a public plaza and amphitheater. The on-site parks and open spaces proposed for Point Wells far exceed the norm ...¹⁶⁸

The Board finds the FSEIS addressed the very real need for additional active recreational facilities to serve a large residential population at Point Wells.¹⁶⁹ The FSEIS analysis concluded that demand for passive recreation would have spill-over effects on Richmond Beach Saltwater Park in Shoreline,¹⁷⁰ and demand for active recreation would be absorbed primarily by City Park in Edmonds.¹⁷¹ A specific mitigation measure was identified: Any development permitted under the Proposed Action that would add more than 500 residents to the Paramount [Point Wells] site shall be required to provide parks and open space on site that allow for active recreational activities. Examples include, but are not limited to ball fields, playgrounds and tennis courts. The proposed recreational facilities shall be approved by the Snohomish County Parks Department prior to issuance of a construction permit.¹⁷²

The Board also finds the development regulations adopted for the Point Wells Urban Center require set-aside of land for parks and open space, an integrated open space network, and public access to the shoreline.¹⁷³ In light of these code requirements, the Board concludes the County was guided by Goal 9.

The Board finds and concludes Petitioners **have not carried their burden** in demonstrating the County's actions were not guided by Goal 9.

Interjurisdictional Coordination — Goal 11

***29** The GMA Goal 11 language — “ensure coordination between communities and jurisdictions to reconcile conflicts” — underscores the emphasis on intergovernmental coordination that appears in other provisions of the GMA, including the RCW 36.70A.100 mandate discussed in Legal Issue 4 above.¹⁷⁴ For example, the legislative findings of RCW 36.70A.010 stress the importance of coordinated planning, stating “citizens, communities, local governments and the private sector [should] cooperate and coordinate” in land use planning.

Petitioners argue forcefully that the County has not been guided by the goal of “ensuring coordination” or an effort to “reconcile conflict.” Rather, they assert the County actions “have created and perpetuated a high rank order conflict” between the County and the two municipalities impacted by the Point Wells redevelopment.¹⁷⁵

The Board notes that Goal 11 is primarily concerned with the planning process, calling for citizen participation and interjurisdictional coordination. While the Goal uses the word “encourage” for citizen participation — “*encourage* the involvement of citizens in the planning process” — the word “ensure” gives greater emphasis to the coordination clause of the Goal — “*ensure* coordination between communities and jurisdictions to reconcile conflicts.” However, Petitioners’ attempt to turn “ensure” into a requirement that all interjurisdictional conflicts be successfully resolved is not supported by any authority. Indeed, giving individual jurisdictions and communities a veto power over adjacent zoning is contrary to the presumption of validity that the statute grants to local GMA enactments.

Rather, the Board reads the second half of Goal 11 as requiring a planning city or county to make active outreach to affected communities and jurisdictions in the interest of coordination and conflict-resolution.¹⁷⁶ The County's process in the case before us clearly allowed communities such as the Richmond Beach neighborhood and the adjacent municipalities of Shoreline and Woodway to provide input and seek solutions.

Further, in the development regulations adopted for Point Wells, the County provides additional opportunities for Shoreline and/or Woodway to shape the Point Wells development, through negotiating a municipal agreement or through comments before the design review board or hearing examiner procedure.¹⁷⁷ Petitioners complain that these processes do not guarantee the municipality's preferences will prevail, but again, they cite no authority for their interpretation of Goal 11.

The Board therefore finds and concludes Petitioners **have not carried their burden** in demonstrating the County's actions were not guided by Goal 11.

Conclusion

***30** The Board concludes that Petitioners have carried their burden in demonstrating the County's actions were not guided by GMA Goals 1, 3 and 12, but have not carried their burden with respect to Goals 9 and 11. However, the

GMA Goals are provided for guidance in the enactment of comprehensive plans and development regulations.¹⁷⁸ Thus, disregard of a Planning Goal is generally not sufficient basis for a ruling of non-compliance unless a related GMA requirement has been violated.¹⁷⁹

Legal Issue 6 challenges both the *Shoreline III* and *Shoreline IV* ordinances. As to *Shoreline III*, the Board has determined the County failed to comply with RCW 36.70A.070 (preamble) and RCW 36.70A.100 by enacting an Urban Center designation lacking plans for efficient highway or transit access, and inconsistent with capital planning of a neighbor municipality. The Board finds and concludes that the County's adoption of the *Shoreline III* ordinances was not guided by Goals 1, 3, and 12. The Board is left with a firm and definite conviction that a mistake has been made.¹⁸⁰

As to the *Shoreline IV* ordinances, all Petitioners' challenges concerning GMA requirements have been dismissed or abandoned.¹⁸¹ In the absence of any proof that the County failed to comply with mandatory provisions of the statute, the Board dismisses the portion of Legal Issue 6 alleging the County's adoption of the *Shoreline IV* ordinances was not guided by GMA Goals.

Finally, Petitioners have failed to carry their burden of demonstrating failure to be guided by Goals 9 and 11. These portions of Legal Issue 6 are dismissed.

LEGAL ISSUE 7

The Prehearing Order sets forth Legal Issue 7 as follows:

7. Did the Ordinances fail to be guided by RCW 36.70A.020(11) and fail to comply with RCW 36.70A.140 and RCW 36.70A.035 where Snohomish County introduced and adopted new substantive amendments to the Ordinances at the end of the public comment period or after the public comment period had closed, without providing further public notice or an opportunity to provide comment? If so, are the ordinances invalid?

This issue was raised by Save Richmond Beach and was argued on cross-motions for a dispositive ruling. In its Order on Motions, the Board dismissed Legal Issue 7.¹⁸²

LEGAL ISSUE 8

Legal Issues 8, 9 and 10 are SEPA challenges. Shoreline and Save Richmond Beach raised these issues, but Save Richmond Beach's issues were dismissed on motions for lack of standing to raise SEPA claims.¹⁸³ The arguments in the consolidated petitioners' briefing for Issues 8 (*Shoreline III*) and 10 (*Shoreline IV*) are therefore only considered on behalf of Shoreline. Sub-issue 8(4) — greenhouse gas mitigation — which was raised only by Save Richmond Beach, is stricken.

*31 The Prehearing Order sets forth Legal Issue 8 as follows:

8. Did Snohomish County fail to comply with SEPA where the SEIS prepared for the project: 1) considered only the "do nothing" and high-density "Urban Center" alternatives; 2) failed to identify the specific units of local government that would provide essential services to an Urban Center at Point Wells; 3) failed to address the significant probable adverse impacts and required mitigation for existing essential services in Shoreline, including emergency services, transportation, and parks; and 4) failed to address how greenhouse gas emissions and climate change impacts from an Urban Center at Point Wells would be mitigated?

Discussion and Analysis

The adequacy of an EIS, the Washington Supreme Court has held, is tested under the rule of reason:

In order for an EIS to be adequate under this rule, the EIS must present decision makers with a “reasonably thorough discussion of the significant aspects of the probable environmental consequences” of the agency's decision. *Cheney*, 87 Wn.2d at 344-45 (quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974)). The rule of reason is “in large part a broad, flexible cost-effectiveness standard”, in which the adequacy of an EIS is best determined “on a case-by-case basis guided by all of the policy and factual considerations reasonably related to SEPA's terse directives.” *Settle* § 14(a)(r), at 156, 155.¹⁸⁴

In addition, the lead agency's decision is entitled to substantial weight.¹⁸⁵ In *Better Brinnon Coalition v Jefferson County*,¹⁸⁶ the Board said:

In any action involving an attack on the adequacy of a “detailed statement”, the decision of the governmental agency is to be given substantial weight. RCW 43.21 C.090. Therefore, we accord the County's decision substantial weight as we examine the adequacy of the County's environmental review.

SEPA Alternatives

Snohomish County issued a DSEIS.¹⁸⁷ in February 2009 to analyze the proposal to designate Point Wells as an Urban Center and rezone the property to Planned Community Business. Shoreline, Woodway, the Port of Edmonds, various transit agencies and other urban service providers, along with citizens, provided comments. The FSEIS,¹⁸⁸ issued June 2009, responded to comments but deferred some analysis of impacts and mitigation to the permitting stage.¹⁸⁹

The County's SEIS considered only two alternatives:

- (1) The Proposed Action, amending the County Comprehensive Plan FLUM and zoning to designate Point Wells an Urban Center and changing the zoning from Heavy Industrial to Planned Business Community; and
- (2) The No Action Alternative, retaining comprehensive plan designation of Urban Industrial and zoning designation of Heavy Industrial.

*32 At the outset, the County argues that Shoreline did not raise the issue of alternatives during the DSEIS scoping process and so is precluded from raising this objection now.¹⁹⁰ WAC 197-11-545(1) provides:

If a consulted agency does not respond with written comments within the time periods for commenting on environmental documents, the lead agency may assume that the consulted agency has no information relating to the potential impact of the proposal as it relates to the consulted agency's jurisdiction or special expertise. Any consulted agency that fails to submit substantive information to the lead agency in response to a draft EIS is thereafter barred from alleging any defect in the lead agency's compliance with Part Four of these rules.

Here Shoreline submitted written comments to the scoping notice within the time allowed (see WAC 197-11-550(1)). Shoreline also provided substantive response to the draft EIS, including in its DSEIS comments a request for analysis of “scaled-back” alternatives.¹⁹¹ The Board concludes Shoreline's objection is not barred.

An EIS is required to contain analysis of alternatives to the proposed action.¹⁹² The SEPA Rules define reasonable alternatives.¹⁹³

“Reasonable alternative” means an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly or indirectly through requirement of mitigation measures.

The Rules clarify:

The word ‘reasonable’ is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.¹⁹⁴

Thus an agency is not required to explore every plausible alternative.¹⁹⁵ The rules simply require that “the proposal (or preferred alternative)” be compared with “alternative courses [plural] of action.”¹⁹⁶ One of these alternatives must be the “no-action” alternative: “The “no-action” alternative shall be evaluated and compared to other alternatives [[plural]].”¹⁹⁷

The courts have stressed the need for a reasonably detailed analysis of a reasonable number and range of alternatives: the discussion of alternatives “is of major importance, because it provides for a reasoned decision among alternatives having differing environmental impacts.”¹⁹⁸ The EIS “must provide sufficient information to allow officials to make a reasoned choice among alternatives.”¹⁹⁹

The SEPA Rules indicate preparation of the EIS for a nonproject action, as is the case here, gives the lead agency more flexibility.²⁰⁰ The reason for more flexible SEPA review of nonproject actions is “because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals.”²⁰¹ In the present case, the County's nonproject action involves just 61 acres in a confined area. The Board finds there is substantial and detailed information available relating to both the natural and built environment for Point Wells and the impacts of potential redevelopment. Thus, though this is a nonproject action, the environmental analysis should still provide decision makers with the basis for “a reasoned decision among alternatives having different environmental impacts.”²⁰²

*33 Indeed, analysis of alternatives is central in nonproject SEPA review. The Rules state: The lead agency *shall discuss* impacts and *alternatives* [plural] in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. *Alternatives should be emphasized.*²⁰³

The Rules clarify:

The EIS's discussion of alternatives for a comprehensive plan, community plan, or other areawide zoning or for shoreline or land use plans shall be limited to a general discussion of the impacts of alternate proposals for policies contained in

such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.²⁰⁴

Shoreline asserts that the County had other land use designations and combinations of land use designations it could have considered for the Point Wells redevelopment that would have yielded less density, generated fewer vehicle trips, and imposed lesser strain on public facilities and services.²⁰⁵ The Board agrees. The record provided in this case contains a number of plans which, though not perhaps formally proposed, might have formed the basis for one or more EIS alternatives resulting in lower environmental costs.²⁰⁶

At the Hearing on the Merits, the County orally agreed that the pivotal public objective of the Point Wells proposal is rehabilitation and reuse of a contaminated and obsolete industrial site. Accommodating growth to meet GMA targets is not the primary driver, so alternative Urban Center locations need not be considered.²⁰⁷ However, limiting the analysis only to (a) the land use and zoning requested by the Intervenor and (b) the no-action alternative, without considering any alternative scenarios, deprived County officials of the information necessary to determine whether a reasonable change in use of Point Wells could be achieved with less environmental impact.

In *Brinnon Group v Jefferson County*,²⁰⁸ affirming a Western Board decision, the Court of Appeals approved the SEPA review for a master planned resort. The court ruled the three alternatives gave County Commissioners an analysis of differing sewer, stormwater and transportation requirements generated under various scenarios, thus providing a range of choices. The Court did not require an intermediate or off-site alternative, but one which met the objectives of the resort proposal while offering County Commissioners information to allow choices based on differing impacts. Relying on the Supreme Court's analysis in *King County*,²⁰⁹ the *Brinnon* court explained:

*34 *Brinnon Group* suggests that *King County* articulates a rule that, for an alternative to be 'reasonable' under SEPA, it must have "intermediary impacts" between the proposal and the no action alternative. While the *King County* court indeed described the one-unit-per-acre alternative as "presenting intermediary impacts" between the proposal and the no action alternative, the court approved the alternative because it had "fewer impacts" in some areas.²¹⁰

In the Board's recent *Davidson Series* decision,²¹¹ the Board approved the city's revised SEIS evaluating a large commercial project in downtown Kirkland, finding the analysis gave the City Council specific information about which intersections would need improvements if the requested development were allocated in different configurations.

By contrast, the "bookend" analysis of no-action and proposed-action in the present case fails to provide any information to allow decisions that might "approximate the proposal's objectives at a lower environmental cost."²¹² For example, Shoreline points out that the Proposed Action generates 12,860 vehicle trips per day on Richmond Beach Drive, while Shoreline's Comprehensive Plan Policy PW-12 states:²¹³

The maximum daily traffic that the City should permit emanating from or entering into Point Wells may not exceed 8,250 vehicle trips per day.

The FSEIS does not analyze any alternatives that would inform the County Council of the intensity of development that would generate traffic at this reduced level. The County Council has no information about thresholds at which a reduced intensity or different balancing of land uses would require fewer intersection improvements or impose other lesser impacts.

At the Hearing on the Merits, BSRE stated that alternatives will be enthusiastically considered during the *permitting* process. BSRE suggests strategies such as the mix of senior housing and the provision of transit service might result in lesser environmental burden. However, land use designations — not just permit decisions - need to be informed by a reasonable analysis of alternatives. To a large extent, density allowances are already set with the Urban Center designation. As the Western Board pointed out in *Better Brinnon Coalition v. Jefferson County*:²¹⁴

Simply providing, as Jefferson County has, that any impacts will be addressed on a permit basis, fails to assess the cumulative impacts and to fully inform the decision makers of the potential consequences of the designations challenged here.

The Board concludes Ordinances No 09-038 and 09-051 were adopted in violation of RCW 43.21 C.030(c)(iii) and do not comply with the requirements of SEPA for review of reasonable alternatives.

· Identification of Responsible Local Governments

*35 Shoreline alleges the FSEIS is non-compliant because it “failed to identify the specific units of local government that would provide essential services to an Urban Center at Point Wells.”²¹⁵ SEPA requires analysis of impacts on both the natural and built environment:

Discussion of significant impacts shall include the cost of and effects on public services, such as utilities, roads, fire, and police protection, that may result from a proposal.²¹⁶

The Board finds the DSEIS and FSEIS generally identify non-County agencies that might be impacted by the proposal or might provide particular urban services.²¹⁷ With respect to a non-project action, the SEPA Rules require: The EIS should identify subsequent actions that would be undertaken by other agencies as a result of the nonproject proposal, such as transportation and utility systems.²¹⁸

The Board does not read this as a mandate to choose each service provider, and Shoreline provides no authority for such a requirement.

The Board concludes Shoreline has not carried its burden in proving that there is a SEPA duty to identify the responsible governmental unit in each case.²¹⁹

· Required Mitigation

Shoreline contends the FSEIS failed to identify and mitigate impacts to Shoreline's parks, emergency services, and transportation facilities.²²⁰ The City points out that all access to Point Wells is through Shoreline via Richmond Beach Drive. This means Point Wells residents are most likely to use Shoreline libraries, recreation facilities, schools, roads and

other public services. Shoreline is reasonably concerned that Urban Center development at Point Wells will reduce its ability as a city to provide necessary services, not just to Point Wells, but in its own service territory.

WAC 197-11-440(6)(a) provides the requirement for EIS analysis of mitigation, stating the EIS shall "discuss reasonable mitigation measures that would significantly mitigate [the significant] impacts." The EIS shall: Clearly indicate those mitigation measures ... if any, that could be implemented or might be required, as well as those, if any, that agencies or applicants are committed to implement.²²¹

Impacts to be analyzed and mitigated include the built environment:

Discussion of significant impacts shall include the cost of and effects on public services, such as utilities, roads, fire and police protection, that may result from a proposal.²²²

Shoreline contends that the FSEIS fails to identify and require the necessary mitigation for the Point Wells Urban Center designation.²²³

· Parks

The FSEIS concludes Urban Center development at Point Wells will increase demand for parks and recreational facilities, and will impact municipal park usage in Shoreline and Edmonds.²²⁴ In mitigation, the FSEIS requires any permitted development to "provide parks and open space amenities on site that allow for active recreational activities."²²⁵ Snohomish County Parks Department is identified as the agency responsible for approving such facilities "prior to issuance of a construction permit" for any development that would add more than 500 residents.²²⁶ The Board's discussion of GMA Goal 9, above, describes how these requirements are incorporated in the Urban Center development regulations.²²⁷ The Board finds and concludes the County's SEPA review (a) addressed the impacts of the proposal on parks and recreational facilities, including Shoreline's parks, and (b) identified mitigation measures to be implemented prior to any development permit being issued.

*36 Shoreline further argues it should share in parks impact fees collected by the County from Point Wells. While the Board appreciates the logic of Shoreline's argument, the Board does not find that SEPA requires the particular mitigation requested by the City.

· Police, Fire and Emergency Services

The DSEIS identifies the need for police, fire and emergency medical services located to provide quick response time to the additional population of Point Wells.²²⁸ As mitigation, the FSEIS indicates agreements should be entered into with designated agencies prior to issuance of future development permits.²²⁹ For police service, where Urban Center development would result in "a sharp increase in demand for police protection," BSRE is required to provide a commercial storefront for use by Snohomish County Sheriffs Department deputies.²³⁰ For fire and emergency service, BSRE must provide documentation that identifies the municipality or fire district responsible for providing services at the site, prior to issuance of construction permits.²³¹ Alternatively, the County may coordinate with Edmonds Fire Department, Shoreline Fire Department, and/or Snohomish County Fire District 1 to implement a mutual assistance

agreement to provide first response service to Point Wells.²³² The FSEIS indicates fire code enforcement may be delegated by the County to the fire authority to which the site is assigned for fire protection purposes.²³³

The Board concludes the County's SEPA review (a) addressed the lack of police, fire and emergency services to the site and (b) identified mitigation measures to be implemented prior to any development permit being issued. The Board finds nothing in the FSEIS suggesting that public safety services in the City of Shoreline itself would be degraded as a result of Point Wells development, so long as the new development is adequately served by other measures.

Transportation

The Point Wells environmental review identifies impacts to off-site transportation infrastructure as the most compelling SEPA challenge. The DSEIS and FSEIS analyze a series of road segments and intersections in Shoreline, Woodway and Edmonds, measure how they would be impacted, and identify mitigation measures — restriping, turn lanes, signalization, etc.²³⁴ The FSEIS defers specific mitigation to subsequent project-level analysis.²³⁵ In the subsequent development regulation amendments, no mitigation measures for off-site transportation impacts are required. The County and BSRE assert that mitigation measures will be imposed as project phases are applied for and approved.²³⁶ Shoreline contends the FSEIS was inadequate because mitigation strategies were not provided.²³⁷ Shoreline relies on *Better Brinnon Coalition v. Jefferson County*,²³⁸ where the Western Board observed that a cursory analysis of impacts, along with postponing further environmental review until the permitting phase, leads to “dangerous incrementalism” where environmental issues are never really addressed. Acknowledging the flexibility allowed in SEPA review of non-project actions, the *Better Brinnon* Board warned that deferral of analysis to the permit process was not a proper use of that flexibility.²³⁹

^{*37} *Better Brinnon* is distinguishable. In *Better Brinnon*, the EIS failed to include any analysis of fish and wildlife habitat, endangered species, water management, and other environmental issues despite comment and requests from WDFW and area Tribes. Here, by contrast, the FSEIS contains extensive analysis of the off-site transportation impacts of concern to Shoreline. For “capacity mitigation,” the FSEIS identifies roadway improvement projects at 13 intersections and along 3 roadway segments, including signalization, road widening, and turn lanes.²⁴⁰ All but three of the projects are in the City of Shoreline. The FSEIS indicates additional “safety mitigation measures” might also be required, such as bulb-outs, speed humps and other traffic calming devices.²⁴¹ Planning-level costs for all identified improvements were estimated at \$24 million.²⁴²

The FSEIS states, “as this is a programmatic assessment, [the mitigation measures] provide a conservative order-of-magnitude estimate” of needed mitigation and “do not represent commitments by the affected jurisdictions or by the applicant.”²⁴³ Project application indicating actual proposed development levels and phasing would trigger more detailed analysis, including the necessary commitments to implement the identified improvements.²⁴⁴

While the SEPA analysis defers specific mitigation requirements to the project-permit process, this appears to the Board to be consistent with the WAC rule that the EIS indicate mitigation measures “that could be implemented or might be required.”²⁴⁵ Giving the County's decision substantial weight, as we must, the Board finds the FSEIS “discuss[ion] of reasonable mitigation measures that would significantly mitigate [transportation] impacts” satisfies the requirements of WAC 197-11-440(6).

Conclusion

The Board finds and concludes the FSEIS is legally inadequate for failure to comply with RCW 43.21 C.030(c)(iii). The Board remands the SEPA documents for identification and analysis of reasonable alternatives.

The Board finds the Petitioner failed to carry its burden of demonstrating the FSEIS was non-compliant with the SEPA requirement to identify and discuss reasonable mitigation measures. Legal Issue 8 sections (2) and (3) are dismissed.

LEGAL ISSUE 9

The Prehearing Order sets forth Legal Issue 9 as follows:

9. [SHORELINE IV] Was the County's SEPA review process inconsistent with its Comprehensive Plan policies and in violation of RCW 36.70A.140, .040(4) and .120 in that the County adopted a SEPA review process for the Urban Center zoning district for Point Wells without a non-project EIS, an action inconsistent with and failing to implement LU Policy 5.B.12 and in violation of the early and continuous public participation contemplated by requiring the EIS as a planning tool?

*38 This issue was raised in the *Shoreline IV* PFR of Shoreline but abandoned in its pre-hearing brief.²⁴⁶ Accordingly, Legal Issue 9 is dismissed.

LEGAL ISSUE 10

The Prehearing Order sets forth Legal Issue 10 as follows:

10. [SHORELINE IV] Did the County fail to comply with SEPA by issuing a DNS that 1) failed to identify the specific units of local government that would provide parks, police, fire and emergency services to an Urban Center at Point Wells; and 2) failed to address probable significant adverse impacts requiring an EIS under RCW 43.21 C.030(2)(c) (including inadequate police, fire and emergency medical response to support projected growth, impacts to parks in Shoreline, and implementation of transportation projects in Shoreline to mitigate projected growth without interlocal agreements or development agreements for such projects), and the impacts are different than those addressed in the 2005 GMA Comprehensive Plan Update EIS or the 2009 SEIS for Point Wells?

This issue is raised by the City of Shoreline and challenges the adequacy of environmental review for the *Shoreline IV* ordinances, in particular, the County's issuance of a DNS and failure to provide addenda on certain matters.

Discussion and Analysis

On April 16, 2009, the County issued a DNS for the *Shoreline IV* Ordinances. The DNS was based on the County staff conclusion that the Point Wells rezone and development regulation amendments did not have a significant adverse impact on the environment requiring an EIS. The County reasoned that the FSEIS on the comprehensive plan and FLUM amendments adequately assessed impacts and identified general mitigation options, and that further detailed impacts and mitigation would be determined through project permit review.

Here the Board has ruled the FSEIS is inadequate for failure to consider reasonable alternatives. A DNS based on an inadequate FSEIS is insufficient and does not comply with SEPA. The Board need not address the parties' additional arguments concerning deferral of mitigation to the project permit process. However, in the interest of resolving all issues,²⁴⁷ the Board addresses Shoreline's contentions as to EIS addenda.

Addenda for New Information or Substantial Changes

Shoreline further contends the County's DNS failed to assess new information or substantial changes to the Point Wells proposal and regulations.²⁴⁸ Shoreline asserts that four changes required additional analysis and mitigation: new floor area ratio and densities, new information from Shoreline's 2009 traffic and safety analysis, the van pool option to meet transit access requirements, and lengthening the transit location requirement from ¼ mile to ½ mile.

The SEPA Rules provide:²⁴⁹

For DNSs and EISs, preparation of a new threshold determination or supplemental EIS is required if there are:

***39** (i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts ... or

(ii) New information indicating a proposal's significant adverse environmental impacts.

The requirement may be satisfied in some instances by “[a]n addendum that adds analyses or information about a proposal but does not substantially change the analysis of significant impacts and alternatives in the existing environmental document.”²⁵⁰

In the present case, the County issued four addenda to the DNS:

- Addendum 1 (Jul. 14, 2009) — Six amendments proposed by the County Executive²⁵¹
- Addendum 2 (Sep. 15, 2009) — Council amendments, including FAR provisions, role of cities in project review, and change from Type I to Type II review²⁵²
- Addendum 3 (Nov. 13, 2009) — Adding two named mobile home parks²⁵³
- Addendum 4 (Apr. 8, 2010) — Adding 14 additional amendments, including FAR provisions and recommendations from the Urban Land Institute²⁵⁴
- Floor area ratio and density increases.

Shoreline states the FAR maximums were increased in the adopted development regulations, allowing for significantly more density than had been assumed and analyzed in the DSEIS. The Board disagrees. In fact, the proposed ordinance which formed the basis for the DSEIS analysis allowed higher FARs²⁵⁵ than were eventually adopted in Ordinance 09-079.²⁵⁶ The tables are provided for comparison as Exhibit B to this Order. They do not indicate the FAR amendment was likely to have significant environmental impact and do not require an addendum to the DNS.

· Shoreline's traffic study

With due notice to the County, Shoreline undertook its own traffic study following issuance of the FSEIS. Shoreline sent its Point Wells Traffic and Safety Analysis to the County on September 30, 2009.²⁵⁷ Shoreline's analysis detailed the impacts to levels of service on Shoreline streets and intersections from build-out of Point Wells. The study identified

required roadway and intersection improvements at a cost of \$33.4 million.²⁵⁸ Shoreline argues an addendum is required, at minimum, to assess this new information and require necessary mitigation of impacts.²⁵⁹

BSRE critiques the Shoreline calculations:

Apart from the inaccurate assumption as to project density,²⁶⁰ Shoreline's analysis fails to consider 1) the type and mix of unit types (senior and live/work units generate significantly fewer trips); 2) reductions resulting from enhanced transit availability, both bus and commuter rail; and 3) internal capture from the provision of on-site grocery store, medical and dental offices and the like.²⁶¹

***40** The Board concurs with Shoreline. Not every third-party "study" requires reanalysis by the lead agency under SEPA. However, on the facts of this case, where the infrastructure at issue is within Shoreline's jurisdiction and best known to its transportation staff, the County Council was entitled to assessment of the Shoreline study in order to inform its decision concerning the Point Wells development regulations.

· Van pool option and half-mile transit location.

Shoreline argues that an addendum or supplemental EIS was required to assess impacts of the Council's last-minute amendments to the transit access regulation introduced and passed after public comment was closed.²⁶² As indicated in the marked text, the adopted amendments to SCC 30.34A.085 increased required distance to transit stops and allowed van pools as a transit option.

SCC 30.34A.085 Access to Public Transportation

Business or residential buildings within an urban center either:

(1) Shall be constructed within ~~one-quarter~~ one-half mile of existing or planned stops or stations for high capacity transit routes such as light rail or commuter lines or regional express bus routes or transit corridors that contain multiple bus routes:

(2) Shall provide for new stops or stations for such high capacity transit routes or transit corridors within ~~one-quarter~~ one-half mile of any business or residence and coordinate with transit providers to assure use of the new stops or stations:
or

(3) Shall provide a mechanism such as van pools or other similar means of transporting people on a regular schedule in high occupancy vehicles to operational stops or stations for high occupancy transit.

Petitioners have provided a preliminary analysis demonstrating that van pool service cannot transport sufficient numbers of people to prevent traffic congestion that will decrease levels of service between Point Wells and the high-capacity transit corridors on SR 99 and I-5.

Shoreline points out projected peak hour trips must be reduced by at least 25% to reduce to just one the number of Shoreline intersections projected to operate at LOS Level F as a result of Point Wells development. Accommodating

25% of peak hour trips in van pools would create its own “logistical headache.”²⁶³ If at least 25% of trips cannot be diverted, LOS fails at additional intersections in Shoreline.²⁶⁴

The Board previously ruled the van-pool and half-mile amendments were within the scope of prior public discussion and thus did not require re-noticing although introduced and passed after the close of public comment.²⁶⁵ The Board notes that an earlier proposal from Paramount of Washington offered a permanent van pool or shuttle service as a transit solution to link Point Wells to high-capacity transit and ferry service in Edmonds.²⁶⁶ While this earlier proposal affirms the Board's finding that van pools were within the scope of prior discussion, it also underscores the need for environmental analysis of language which, on its face, makes van pools a permanent, not merely interim, substitute for high-capacity transit access. At the same time, the County may determine whether doubling the walking distance to transit from one-quarter mile to one-half mile is likely to significantly decrease use of public transit.

Conclusion

*41 The Board concludes that the DNS for Ordinance Nos. 09-079 and 09-080 rests on an inadequate EIS and therefore is legally inadequate. The Board further finds that Shoreline has carried its burden of proof in demonstrating an addendum or supplemental EIS was required to take into consideration Shoreline's Traffic and Safety Study and the amendments to SCC 30.34A.085.

VII. CONCLUSION OF LEGAL ISSUES

Ordinance Nos. 09-038 and 09-051 amended the Snohomish County comprehensive plan and FLUM to designate Point Wells an Urban Center. The Board concludes the action is clearly erroneous in three respects:

- The designation was inconsistent with County comprehensive plan provisions concerning Urban Centers and thus non-compliant with the internal consistency requirements of RCW 36.70A.070 (preamble). [Legal Issue 1]
- Because the action thwarted GMA compliance by the City of Shoreline, the action violated the RCW 36.70A.100 requirement for external consistency. [Legal Issue 4(b)].
- The action was not guided by GMA Planning Goals 1, 3, and 12. [Legal Issue 6 (Goals 1, 3, 12)].

Petitioners abandoned or failed to carry their burden of proof on other legal issues alleging GMA violations for Ordinance Nos. 09-038 and 09-051: Legal Issue 2, Legal Issue 4(a) and (c), Legal Issue 5, and Legal Issue 6 (Goals 9 and 11).

Ordinance Nos. 09-079 and 09-080 amended the County's development regulations concerning Urban Centers with specific reference to Point Wells. The Board dismissed all of the Petitioners' allegations of non-compliance with GMA requirements due to abandonment or citation to inapplicable statutory provisions: Legal Issue 1, Legal Issue 3, and Legal Issue 4. The Petitioners carried their burden of showing the ordinances were not guided by GMA Planning Goals 1, 3, and 12, but because the goal violations were not tied to violation of specific statutory requirements, the Board did not reach a finding of GMA non-compliance with respect to Ordinance Nos. 09-079 and 09-080. Petitioners' request for a finding of invalidity is without merit.

The City of Shoreline also raised SEPA challenges. The Board ruled the County's FSEIS for Ordinance Nos. 09-038 and 09-051 failed to comply with RCW 43.21 C.030(c)(iii) and remanded for analysis of reasonable alternatives. However, Shoreline failed to carry its burden of demonstrating violation of the SEPA requirements with respect to identification of responsible agency or mitigation measures.

As to the challenge to the DNS for Ordinance Nos. 09-079 and 09-081, the Board ruled that because the DNS is predicated on the FSEIS for the comprehensive plan amendments, which has been remanded as inadequate, the DNS is also inadequate. The Board further found certain new information and changes to the proposal required addenda to the DNS pursuant to WAC 197-11-600(3).

The Board remands all four ordinances to the County to take legislative action to achieve compliance with the GMA and SEPA as set forth in this order. RCW 36.70A.300(3)(b) requires the Board to set a time for compliance “not in excess of one hundred eighty days, or such longer period as determined by the board in cases of unusual scope or complexity.” The Board finds the present case presents unusual complexity, as compliance is likely to require negotiation of interlocal agreements and commitments from regional transportation and other service providers, in addition to revision of SEPA analysis. The Board therefore sets a one-year compliance schedule. If the County acts to bring its plan into compliance with the GMA prior to the compliance deadline, RCW 36.70A.330(1) provides that it may by motion request an earlier hearing.

VIII. INVALIDITY²⁶⁷

*42 RCW 36.70A.302(1) empowers the Board to invalidate a comprehensive plan amendment which is found to be inconsistent with the GMA, where the Board ““includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter.”

The Board found that Snohomish County's adoption of Ordinance Nos. 09-038 and 09-051 was **clearly erroneous** as it violates the internal consistency requirements of RCW 36.70A.070 (preamble) and the external consistency requirements of RCW 36.70A.100. The noncompliant Ordinances are **remanded** to the County in this Order. The Board also found that the County's action was **not guided by** GMA Goals 1, 3, and 12, which provide:

1. Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

3. Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

12. Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

GMA Goals 1, 3, and 12 are linked in their call for coordinated planning that ensures urban growth is efficiently served by multimodal transportation and other urban services. In *Fallgatter V and VIII*,²⁶⁸ the Board explained the interdependence of these goals:

The Growth Management Act, from its inception, was built around the concept of coordinating urban growth with availability of urban infrastructure. Determining that “uncoordinated and unplanned growth” posed a threat to the state and its citizens [RCW 36.70A.010], the Legislature created a framework that requires consistency between urban land use planning and coordinated provision of capital facilities and urban infrastructure. *See, e.g.*, RCW 36.70A.070(3), .110(3). The “urban growth” and “public facilities” goals used to guide local comprehensive plans are cross-referenced. [RCW 36.70A.020(1), (12)] ... The goal of an efficient transportation system, coordinated with local comprehensive plans, is equally interrelated. RCW 36.70A.020(3).

The Board may enter an order of invalidity upon determination that the continued validity of a non-compliant enactment substantially interferes with the fulfillment of the goals of the GMA. Based on the facts and conclusions set forth under Legal Issues 1, 4, and 6 above, the Board makes the following Findings of Fact and Conclusions of Law.

In enacting Ordinance Nos. 09-038 and 09-051 Snohomish County designated Point Wells an Urban Center. The Urban Center designation for Point Wells is inconsistent with the County's comprehensive plan policies for Urban Centers, which require ready access to transit, the road system and other urban services. The designation is also inconsistent with City of Shoreline infrastructure capacity, as it would result in traffic on Shoreline roads beyond what can be accommodated in the City's capital facilities plans. Thus the Ordinances violate the internal consistency requirements of RCW 36.70A.070 (preamble) and the external consistency requirements of RCW 36.70A.100.

***43** The designation of Point Wells as an Urban Center interferes with the fulfillment of GMA Goals because the enactment thwarts GMA objectives:

- to accommodate urban growth where urban services can be efficiently provided [Goal 1],
- to encourage an efficient multi-modal transportation system based on regional priorities and consistent with city comprehensive plans [Goal 3], and
- to ensure provision of urban services in urban areas as growth occurs, without decreasing service levels for existing residents [Goal 12].

The Board concludes the continued validity of Ordinance Nos. 09-038 and 09-051 **substantially interferes** with the goals of providing urban development where urban services can be efficiently delivered without decreasing established levels of service [Goals 1 and 12]. The continued validity of the ordinances also **substantially interferes** with the goal of developing "efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans" [Goal 3].

Therefore the Board enters a **determination of invalidity** for Snohomish County Ordinance Nos. 09-038 and 09-051.

IX. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties and having deliberated on the matter, the Board **ORDERS**:

Case 09-3-0013c — *City of Shoreline, et al. v Snohomish County (Shoreline III)*

- 1) Snohomish County's adoption of Ordinance Nos. 09-038 and 09-051 was **clearly erroneous** in the following respects:
 - The County's action **does not comply** with the requirements of RCW 36.70A.070 (preamble) and RCW 36.70A.100 (as concerns the City of Shoreline).
 - The County was **not guided by** RCW 36.70A.020, Planning Goals 1, 3, and 12.
 - The County's SEPA review **did not comply** with RCW 43.21 C.030(c)(iii).

2) Concerning Ordinance Nos. 09-038 and 09-051, Petitioners have abandoned or failed to carry the burden of proof in demonstrating failure to comply with:

- RCW 36.70A.070 (3), (6), and (8),
- RCW 36.70A.100 as regards Legal Issue 4(a) Woodway and (c) King County,
- RCW 36.70A.110(3) and (4),
- RCW 36.70A.020(9) and (11), and
- WAC 197-11-440(6) as regards Legal Issue 8(2) and (3).

Legal Issues 2 and 5, and the indicated portions of Legal Issues 4, 6 and 8 are **dismissed**.

3) The Board **remands** Ordinance Nos. 09-038 and 09-051 to Snohomish County to take legislative action to comply with the requirements of the GMA and SEPA as set forth in this Order.

4) The continued validity of Ordinance Nos. 09-038 and 09-051 substantially interferes with the fulfillment of GMA Goals 1, 3, and 12-RCW 36.70A.020(1), (3), (12). Therefore the Board enters a **determination of invalidity** with respect to Ordinance Nos. 09-038 and 09-051.

Case 10-3-0011c — *City of Shoreline, et al. v Snohomish County (Shoreline IV)*

***44** 5)Concerning Ordinance Nos. 09-079 and 09-080, Petitioners have abandoned or failed to carry the burden of proof in demonstrating failure to comply with:

- RCW 36.70A.070 (preamble),
- RCW 36.70A.040(4) and RCW 36.70A.120, and
- RCW 36.70A.100.

Legal Issue 3 and challenges to Ordinance Nos. 09-079 and 09-080 under Legal Issues 1 and 4 are **dismissed**. Challenges to Ordinance Nos. 09-079 and 09-080 under Legal Issue 6 (GMA Goals) are also **dismissed**. Petitioners' request for an order of invalidity is **denied**.

6) The SEPA review for Ordinance Nos. 09-079 and 09-080 is deficient, as set forth in this Order.

7) The Board **remands** Ordinance Nos. 09-079 and 09-080 to Snohomish County to take legislative action to comply with the requirements of SEPA as set forth in this Order.

Combined Compliance Schedule

8) The Board sets the following schedule for the County's compliance:

Item	Date Due
Compliance Due	April 25, 2012
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	May 9, 2012
Objections to a Finding of Compliance	May 23, 2012
Response to Objections	May 30, 2012
Compliance Hearing — Location to be determined	June 6, 2012 10:00 a.m.

Dated this 17th day of April, 2011.

Margaret Pageler
Board Member
David O. Earling
Board Member
William P. Roehl
Board Member

Exhibit A**Restated and Coordinated Legal Issues*****Shoreline III and Shoreline IV*****I. INTERNAL CONSISTENCY**

1. Did Snohomish County Ordinances 09-038, 09-051, 09-079, and 09-080 (collectively, the "Ordinances") fail to comply with RCW 36.70A.070, because they are internally inconsistent with Snohomish County GMACP/GPP, Goal LU 2, Policy LU 3.A.2, Policy LU 3.A.3, Glossary Appendix E, LU Policy 3.B.1 - 2, and provisions in the GMACP/GPP that establish access to high capacity transit as a criterion for designation as an Urban Center?²⁶⁹ If so, are the Ordinances invalid?
2. **[SHORELINE III]** Did Snohomish County Ordinances 09-038 and 09-051 (collectively, the "Shoreline III Ordinances") fail to comply with RCW 36.70A.070 (preamble), (3), (6) and (8) as they apply to Point Wells, because they are not consistent with the GMACP elements related to capital facilities, transportation, parks/open space, and recreational facilities?²⁷⁰ If so, are the Ordinances invalid?
3. **[SHORELINE IV]** Did Snohomish County Ordinances 09-079 and 09-080 (collectively, the "Shoreline IV Ordinances") violate RCW 36.70A.040(4) and RCW 36.70A.120 by adopting development regulations that were inconsistent with and failed to implement Snohomish County GMACP provisions in the "Centers" section of the LU

Urban Center Chapter, LU Policy 3.A.3, FLUM Center Designation "Urban Center," and Glossary Appendix E, by designating Point Wells as an Urban Center zone where the location of Point Wells is not in proximity to existing or planned high capacity transit routes, transportation corridors, or public transportation stations?²⁷¹

II. COORDINATION WITH NEIGHBORING JURISDICTIONS

4. Did the Ordinances fail to comply with RCW 36.70A.100 where:

a. TOWN OF WOODWAY: Point Wells is located within the Town's MUGA. The Town's Comprehensive Plan shows the property with an Industrial designation. The Ordinances are not coordinated or consistent with the Town's existing Comprehensive Plan.²⁷²

b. CITY OF SHORELINE: The City of Shoreline Comprehensive Plan indicates a Mixed Use development with urban densities. However, the densities proposed in the challenged Ordinances far exceed the contemplation of the Shoreline Comprehensive Plan.²⁷³

c. KING COUNTY: The Point Wells designation is not consistent with the transportation element of King County's GMACP. (See King County GMACP, Technical Appendix C, Transportation.)²⁷⁴

If so, are the Ordinances invalid?

5. [SHORELINE III] Did the Shoreline III Ordinances fail to comply with RCW 36.70.110(3) and (4) as they apply to Point Wells because they designate urban growth in an area not adequately served by public facilities and services, and did not acknowledge, given the realities of access and proximity, that Shoreline and/or Woodway are the units of local government most appropriate to provide urban services?²⁷⁵

III. GMA GOALS

6. Did the Ordinances fail to be guided by RCW 36.70A.010 and RCW 36.70A.020 (1) [compact urban development], (3) [transportation], (9) [parks], (11) [coordination with neighboring jurisdictions], and (12) [provision of capital facilities and services]?²⁷⁶ If so, are the ordinances invalid?

IV. PUBLIC NOTICE

7. Did the Ordinances fail to be guided by RCW 36.70A.020(11) and fail to comply with RCW 36.70A.140 and RCW 36.70A.035 where Snohomish County introduced and adopted new substantive amendments to the Ordinances at the end of the public comment period or after the public comment had period had closed, without providing further public notice or an opportunity to provide comment?²⁷⁷ If so, are the ordinances invalid?

V. SEPA

8. Did Snohomish County fail to comply with SEPA where the SEIS prepared for the project: 1) considered only the "do nothing" and high-density "Urban Center" alternatives;²⁷⁸ 2) failed to identify the specific units of local government that would provide essential services to an Urban Center at Point Wells;²⁷⁹ 3) failed to address the significant probable adverse impacts and required mitigation for existing essential services in Shoreline, including emergency services, transportation, and parks;²⁸⁰ and 4) failed to address how greenhouse gas emissions and climate change impacts from an Urban Center at Point Wells would be mitigated?²⁸¹

9. [SHORELINE IV] Was the County's SEPA review process inconsistent with its Comprehensive Plan policies and in violation of RCW 36.70A.140, .040(4) and .120 in that the County adopted a SEPA review process for the Urban Center zoning district for Point Wells without a non-project EIS, an action inconsistent with and failing to implement LU Policy 5.B.12 and in violation of the early and continuous public participation contemplated by requiring the EIS as a planning tool?²⁸²

10. [SHORELINE IV] Did the County fail to comply with SEPA by issuing a DNS that 1) failed to identify the specific units of local government that would provide parks, police, fire and emergency services to an Urban Center at Point Wells; and 2) failed to address probable significant adverse impacts requiring an EIS under RCW 43.21 C.030(2)(c) (including inadequate police, fire and emergency medical response to support projected growth, impacts to parks in Shoreline, and implementation of transportation projects in Shoreline to mitigate projected growth without interlocal agreements or development agreements for such projects), and the impacts are different than those addressed in the 2005 GMA Comprehensive Plan Update EIS or the 2009 SEIS for Point Wells?²⁸³

EXHIBIT B

1. Floor area ratios adopted in Ordinance No. 09-079.

Table 30.34A.030(1)

Floor to Area Ratios

	Minimum	Maximum	Maximum w/ bonus 30.34A.030(2)	Maximum w/ bonus 30.34A.030(3)
Non-residential	.5	1.0	1.5	2.5
Residential	.5	1.0	1.5	2.5
Mixed Use	1.0	2.0	3.0	5.0
Ground Floor Retail	.25	2.0	2.25	5.0

2. Floor area ratios proposed in draft ordinance providing base-line assumptions for the DSEIS. *Shoreline IV* Index 71, p. 50.

Table 30.34A.030(1)

Floor to Area Ratios

	Minimum	Maximum	Maximum w/ bonus 30.34A.030(2)	Maximum w/ bonus 30.34A.030(3)
Non-residential	.5	1.0	1.5	2.5
Residential	1.0	2.0	3.0	4.0
Mixed Use	1.5	3.0	4.5	6.5

Footnotes

- a1 *This Corrected FDO makes the clerical corrections indicated in footnote 30 of the Order on Motions for Reconsideration issued by this Board on May 16, 2011.*
- 1 Amended Ordinance No. 09-038. Relating to the Growth Management Act, adopting future land use map amendments to the Snohomish County Growth Management Act Comprehensive Plan (GMACP) and zoning map amendments to implement changes to the Future Land Use Map for the Southwest Urban Growth Area (SW 41- Paramount of Washington, LLC)
- 2 Amended Ordinance No. 09-051. Relating to the Growth Management Act (GMA), adopting amendments to the Land Use (LU) chapter of the Snohomish County Growth Management Act Comprehensive Plan (GMACP) — General Policy Plan (GPP) for Urban Centers
- 3 Snohomish County Comprehensive Plan, Appendix E-Glossary/Definitions: “Urban Center: An area with a mix of high-density residential, office and retail uses with public and community facilities and pedestrian connections located along an existing or planned high capacity transit route.”
- 4 The Richmond Beach neighborhood is within the City of Shoreline.
- 5 Order of Consolidation, August 5, 2010.
- 6 Amended Ordinance No. 09-079. Relating to Urban Center design standards, establishing a new zone for Urban Centers, establishing bulk regulations for Urban Centers; amending bulk regulations for the Neighborhood Business Zone; amending and repealing definitions to Subtitle 30.9 SCC; amending sections of and adding sections to Title 30 SCC
- 7 Amended Ordinance No. 09-080. Relating to the Growth Management Act, adopting zoning map amendments to implement a new zoning classification for the Urban Center comprehensive plan designation.
- 8 August 23, 2010, Order Coordinating Cases
- 9 December 15, 2010 Prehearing Order
- 10 August 23, 2010 Order on Intervention. BSRE's predecessor in interest was Paramount of Washington, LLC, and the SEPA documents and other records sometimes refer to Paramount. Other filings refer to BSRE as Blue Square. The Board uses “BSRE” to indicate the property-owning entity.
- 11 February 16, 2011 Order Granting Amicus
- 12 The Board issued orders in response to these motions on January 14, 2011 (Supplemental Evidence) and January 18, 2011 (Dispositive Motions).
- 13 Petitioner Richmond Beach Preservation Association and 23 named individuals voluntarily withdrew from the *Shoreline III* case, leaving Save Richmond Beach as the petitioner in that case. Order on Dispositive Motions, at 2.
- 14 In its Order on Dispositive Motions, the Board ruled the City of Shoreline satisfied the requirements for SEPA standing, but Petitioner Save Richmond Beach did not have SEPA standing and its SEPA challenge was dismissed. Order on Dispositive Motions, at 12.
- 15 RCW 36.70A.320(1) provides: Comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.
- 16 RCW 36.70A.320(2) provides: The burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.
- 17 RCW 36.70A.280, RCW 36.70A.302
- 18 RCW 36.70A.290(1)
- 19 RCW 36.70A.320(3).
- 20 *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing to *Dept. of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe, et al v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006).
- 21 RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.
- 22 *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000)(Local discretion is bounded by the goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the degree of deference to be granted under

the clearly erroneous standard, the Supreme Court has stated: The amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and capricious standard. *Id.* at 435, Fn.8.

23 Ordinance Nos. 09-038 and 09-051 (*Shoreline III*).

24 Ordinance Nos. 09-079 and 09-080 (*Shoreline IV*).

25 *Klickitat County Citizens v. Klickitat County*, 122 Wn.2d 619, 634 (1993).

26 *Citizens' Alliance v. City of Auburn*, 126 Wn. 2d 356, 362, 894 P.2d 1300 (1995).

27 DNS/MDNS is reviewed under clearly erroneous standard: *Murden Cove v. Pierce County*, 41 Wn.App. 515, 523 (1985); *Norway Hill v. King County*, 87 Wn.2d 267, 275 (1976); *Anderson v. Pierce County*, 86 Wn.App. 290(1997).

28 RCW 43.21 C.090.

29 Shoreline and Save Richmond Beach Consolidated Prehearing Brief — Shoreline III, p. 2 fn. 1.

30 Consolidated Prehearing Brief — Shoreline IV, at 18.

31 RCW 36.70A.290(1).

32 For example, Petitioners' Legal Issue 6 based on GMA planning goals — RCW 36.70A.020 — is reviewed in the context of legal issues alleging non-compliance with specific GMA requirements.

33 See generally, Petitioners' Consolidated Statement of Facts — Shoreline III (Jan. 27, 2010); Petitioners' Consolidated Statement of Facts — Shoreline IV (Feb. 2, 2011); Intervener's Restatement of Facts (Feb. 11, 2011).

34 At the top of the bluff are an additional 37 acres of unincorporated Snohomish County adjacent to Woodway. This area is not part of the Urban Center redesignation and is not of concern in the present dispute.

35 Remediation is expected to cost \$20 to \$30 million.

36 Index # 317 "Plan Vision" PowerPoint. While an effective sales tool, the PowerPoint is not a GMA plan.

37 *L. Michael Investments v. Town of Woodway*, CPSGMHB Case No. 98-3-0012, Final Decision and Order (Jan. 8, 1999), at 9; *City of Shoreline v. Snohomish County (Shoreline I)*, CPSGMHB Case No. 00-3-0010, Order on Motions (Sep. 5, 2000); *City of Shoreline v. Town of Woodway (Shoreline II)*, CPSGMHB Case No. 01-3-0013, Final Decision and Order (Nov. 28, 2001), Supreme Court decision in *Chevron USA Inc. v. CPSGMHB*, 156 Wn. 2d 131 (2005).

38 Snohomish County's Growth Management Act Comprehensive Plan/General Policy Plan (GMACP/CPP) is referred to herein as the County's comprehensive plan.

39 Shoreline III, Index # 320. Town of Woodway Comprehensive Plan 2004 Update (revised Nov. 17, 2008) at 5- 6 (Vision) and Appendix pp. 59-62.

40 Shoreline III, Index # 319. City of Shoreline Comprehensive Plan 2005, Subarea Plan 2-Point Wells, at 259-267.

41 Richmond Beach Drive is a narrow right-of-way between residential development on the east and railroad grade on the west.

42 Shoreline III, Index # 104. DSEIS, at 3.11-1. Shoreline's 2009 traffic study showed LOS of F at three Richmond Beach intersections resulting from Urban Center development at Point Wells, even with the mitigations suggested in the study. Index # 180, Table, p. 12.

43 Shoreline III, Index # 104, at 3.11-1.

44 Shoreline III, Index # 104, at 3.11-13 to 3.11-16

45 BSRE states that Community Transit's Bus Rapid Transit to Everett along Aurora and Sound Transit's light rail to Seattle along I-5 are projected to be constructed and operating before the first Point Wells residential units come on line. However, these connections are 2 ½ to 3 miles from Point Wells. Intervener's Restatement of Facts, at 7-8.

46 The FSEIS notes: "2025 transportation analysis reflected in the SEIS [] determined that assumption of a high capacity rail station is not reasonable regardless of proposed zoning that would be expected to provide adequate density to support transit service." Shoreline III, Index # 169, p. 3.14-5.

47 King County Metro does not ordinarily serve beyond King County boundaries. BSRE states that it is negotiating with King County Metro to extend service 0.5 miles into Point Wells, where BSRE proposes to provide a transit center. Intervener's Restatement of Facts, at 7. Metro's present routes provide all-day half-hour service to Northgate and peak hour runs to downtown Seattle.

48 *Children's Alliance I v City of Bellevue*, CPSGMHB Case No. 95-3-0001, Order on Dispositive Motions (May 17, 1995), at 6; *Hensley IV v Snohomish County*, CPSGMHB Case No. 01-3-0004c, Final Decision and Order (Aug. 15, 2001), at 20 (a challenge as to whether a jurisdiction has adopted regulations that implement its plan or whether the jurisdiction's planning activities are in conformity with its plan is appropriately brought by challenging compliance with RCW 36.70A.040(3) or .120, not through a challenge to the consistency provisions of RCW 36.70A.070(preamble)).

49 CPSGMHB Case No. 08-3-0002, Final Decision and Order (Oct. 24, 2008), at 24.

- 50 County Comprehensive Plan, at LU-16-17, emphasis supplied.
- 51 Consolidated Prehearing Brief of Petitioners City of Shoreline and Save Richmond Beach — Shoreline III (Jan. 27, 2011), at 4-11.
- 52 Snohomish County Response Brief — Shoreline III (Feb. 11, 2011) at 5-10.
- 53 John Moffat at HOM.
- 54 *King County v CPSGMHB*, 91 Wn. App. 1, 12 (1998).
- 55 Consolidated Prehearing Brief — Shoreline III, at 7.
- 56 Woodway Prehearing Brief at 2; Consolidated Prehearing Brief — Shoreline III, at 6-8
- 57 I-5 and 128th St. SE; I-5 and 164th St. SW; State Route 527 and 196th St. SE; State Route 99 and 152nd St. SW I-5 and 44th Ave. W. Shoreline III, Index # 246, at 8-9.
- 58 LU 3.A.3
- 59 Average daily vehicle counts range from 30,000 to 218,000 at the other five Urban Centers, compared to 790 on Richmond Beach Drive. Consolidated Prehearing Brief — Shoreline III, at 8.
- 60 *West Seattle Defense Fund v. City of Seattle*, CPSGMHB Case No. 94-3-0016, Final Decision and Order (Apr. 4, 1995), at 27: "... consistency ... can also mean that policies of a comprehensive plan, for instance, must work together in a coordinated fashion to achieve a common goal."
- 61 Woodway Prehearing Brief, at 2.
- 62 LU 2.A.5 encourages location of high density residential development ""within walking distance of transit access or designated transit corridors." Shoreline III, Index # 246, p. 3.
Glossary Appendix E defines Urban Center: "An area ... located along an existing or planned *high capacity transit route*." Index # 246, p 11.
Urban Centers explanatory text states: "Urban Centers provide a mix of high-density ... development ... located *along a designated high capacity route*." LU - 14.
- 63 LU-14 (emphasis added).
- 64 As noted above, Point Wells currently lacks any transit services (much less, higher frequency transit) and lacks adequate highway access (and will require improvements to multiple road segments and intersections in Shoreline and Woodway). Petitioners have also challenged whether the County's adopted development regulations provide the necessary implementation.
- 65 Shoreline III, Index # 12, *Vision 2040*.
- 66 Shoreline III, Index # 12, at 45, 47.
- 67 "Major regional investments for transportation and other infrastructure should be prioritized to these locations County-level and local funding are also appropriate to prioritize to regional growth centers." Shoreline III, Index # 12, *Vision 2040*, at 48.
- 68 Shoreline III, Index # 12, *Vision 2040*, at 47 (emphasis supplied).
- 69 CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007) at 50-ff.
- 70 CPSGMHB Case No. 07-2-0026c, Final Decision and Order (date), at 51-52.
- 71 Intervener's Restatement of Facts, at 6-7.
- 72 Shoreline III, Index # 104, 3.11-15, 16.
- 73 Shoreline IV, Index # 243. The Board notes that Sound Transit's letter explains some of the regional complexities involved in adding service in Snohomish County and the considerations of rail line availability and scheduling. Sound Transit's letter makes no commitment, regardless of developer financing.
- 74 Ordinance No. 09-051 adds a definition for "Planned Transit Station" to the County comprehensive plan Glossary: "A transit station identified in a public transit agency long range or capital plan located along a high capacity route."
- 75 Consolidated Prehearing Brief — Shoreline III, at 2, fn. 2; Consolidated Reply Brief — Shoreline III, at 2. The Petitioners explained: ""The abandonment of the City's PFR 3.5 and 3.7 and SRB PFR 13 and 15 occurred because the parties have no reason to directly challenge the mandatory elements of the County's Comprehensive Plan on capital facilities and transportation since the impacts are directed at *Shoreline's* capital facilities and transportation planning, hence the more direct focus on the goals."
- 76 Consolidated Pre-hearing Brief- Shoreline III, at 10-11.
- 77 Shoreline III, Index # 104, DSEIS, at figure 3.11-7, p. 3.11-32 to - 33.
- 78 Shoreline III, Index # 104, DSEIS, at 3.11-42 to -43.

- 79 See, *Kap II v. City of Redmond*, CPSGMHB Case No. 06-3-0026, Final Decision and Order (Apr. 5, 2007), at 4.
- 80 As noted above, Petitioners' Legal Issue 1 also alleged the *Shoreline IV* ordinances were inconsistent with the comprehensive plan, but cited to RCW 36.70A.070, pertaining to comprehensive plans not development regulations.
- 81 See also WAC 242-02-210(2)(c) requiring a detailed statement of the issues being presented.
- 82 See *City of Bremerton v. Kitsap County*, CPSGMHB Case No. 04-3-0009c, Final Decision and Order (Aug. 9, 2004), at 5; *TS Holdings v. Pierce County*, CPSGMHB Case No. 08-3-0001, Final Decision and Order (Sep. 2, 2008), at 6.
- 83 *Tulalip Tribes of Washington v Snohomish County*, CPSGMHB Case No. 96-3-0029, Final Decision and Order (Jan. 8, 1997), at 7.
- 84 *TS Holdings v. Pierce County*, CPSGMHB Case No. 08-3-0001, Final Decision and Order (Sep. 2, 2008), at 7 (dismissing challenges based on GMA provisions only cited by Petitioner in restating the Legal Issues in the case).
- 85 See Snohomish County Response — Shoreline III, at 4.
- 86 *Bothell et al v Snohomish County*, CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007), at 27; *Kap II v. City of Redmond*, CPSGMHB Case No. 06-3-0026, Final Decision and Order (Apr. 5, 2007), at 11; *Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order (Mar. 1, 1993), at 8.
- 87 RCW 36.70A.010 "It is in the public interest that ... local governments cooperate and coordinate with one another in land use planning".
- 88 RCW 36.70A.020(11).
- 89 RCW 36.70A.210(1) (requiring CPPs to provide a "framework [to] ensure that city and county comprehensive plans are consistent").
- 90 "In 2001 Woodway amended its comprehensive plan to include goals and policies concerning Point Wells, including identifying Point Wells as a PAA for the Town of Woodway and calling for negotiation of an interlocal agreement with Snohomish County concerning land use control and impact mitigation." *Chevron USA Inc v Hearings Board*, 123 Wn App. 161, 165, citing Woodway Land Use Policy 19.
- 91 Shoreline III, Index # 320. Woodway Comprehensive Plan, (2004 Update, revised Nov. 17, 2008) LUP-20. The County's Urban Center designation does not include the upper bluff area.
- 92 Woodway Prehearing Brief, at 5-6
- 93 Shoreline III, Index # 320. Woodway Comprehensive Plan, at 6.
- 94 *Id.*
- 95 For example, Woodway's Alternative F, for the waterfront area, envisions 270 multi-family units and a 100-room hotel, with commercial uses centered on a marina. Shoreline III, Index # 320, at 62.
- 96 Woodway Prehearing Brief, at 5.
- 97 For example, Shoreline Comprehensive Plan Policy T25 provides; "Work with Sound Transit to study the development of a low impact commuter rail stop in the Richmond Beach/Point Wells area." Shoreline III, Index # 319, at 58.
- 98 See, *Chevron USA Inc v Hearings Board*, 123 Wn App. 161, 164-165 (noting that under King County's countywide planning policies, PAAs "shall not overlap").
- 99 Shoreline III, Index # 155, at 5-6.
- 100 Shoreline III, Index # 319, Shoreline Comprehensive Plan, at 266.
- 101 Shoreline III, Index # 104, at 3.11-26.
- 102 Shoreline III, Index # 169, FSEIS, at 3-37.
- 103 Consolidated Reply Brief - Shoreline IV, at 6.
- 104 Intervener's Restatement of Facts, at 3.
- 105 Shoreline III, Index # 155, at 5-6.
- 106 Petitioners' Consolidated Statement of Facts — Shoreline IV, at 6.
- 107 RCW 36.70A.210(1).
- 108 RCW 36.70A.210(3)(f).
- 109 *King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161, 175, 979 P.2d 374 (1999) ("The CPPs are thus the major tool provided in the GMA to ensure that the comprehensive plans of each city within a county agree with each other"); *Kitsap Citizens, et al v Kitsap County*, CPSGMHB Case No. 01-3-0019c, Final Decision and Order (May 29, 2001), at 24 ("CPPs are the primary benchmark for ensuring and determining consistency among comprehensive plans"); *City of Snoqualmie and City of Issaquah v King County*, CPSGMHB Case No. 92-3-0004c, Final Decision and Order (Mar. 1, 1993), at 8.

- 110 *Seattle v Burien*, CPSGMHB Case No. 07-3-0005, Final Decision and Order (July 9, 2007); *Burien v. Seattle*, CPSGMHB Case No. 07-3-0013, Final Decision and Order (July 9, 2007).
- 111 King County Comprehensive Plan Policy U-203 provides: "For contested areas, the county should attempt to help resolve the matter, or to enter into an interlocal agreement with each city for the purpose of bringing the question of annexation before voters." See, *Seattle v Burien*, at 13.
- 112 *Seattle v Burien*, at 12; *Burien v Seattle*, at 11.
- 113 CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007), at 29.
- 114 Amended Ordinance 09-038, page 1.
- 115 CPSGMHB Case No. 04-3-0019, Final Decision and Order (Dec. 16, 2004), at 9-11.
- 116 CPSGMHB Case No. 06-3-0026, Final Decision and Order (Apr. 5, 2007), at 11-12.
- 117 Shoreline III, Index # 104, DSEIS, at 3.14-9 to 3.14-14.
- 118 County Response Brief — Shoreline III, at 12, and ff. 51, 52.
- 119 As previously noted, Shoreline's sub-area process began after BSRE submitted its proposed docket amendment to Snohomish County.
- 120 *Laurence Michael Invs., v Town of Woodway*, CPSGMHB Case No. 98-3-0012, Final Decision and Order (Jan. 8, 1999), at 23; *West Seattle Defense Fund v City of Seattle*, CPSGMHB Case No. 94-3-0016, Final Decision and Order (Apr. 4, 1995), at 27; cited with approval, *Chevron USA Inc v Hearings Board*, 123 Wn App. 161, 167.
- 121 As ruled above, Woodway's "coordination" remedies are governed by Snohomish County County-wide Planning Policies, RCW 36.70A.210.
- 122 *Bothell et al v Snohomish County*, CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007), at 28.
- 123 *MT Development LLC, et al., v. City of Renton*, 140 Wn. App. 422, 165 P.3d 427 (2007).
- 124 RCW 36.70A.070(6)(iii)(B).
- 125 Shoreline III, Index # 169, FSEIS at 3-57.
- 126 *Chevron USA Inc v Hearings Board*, 123 Wn App. 161, 167.
- 127 Consolidated Prehearing Brief — Shoreline IV, at 17-18.
- 128 Shoreline III, Index # 180.
- 129 *Id.*
- 130 Shoreline III, Index # 218.
- 131 *Citizens for Responsible Growth, et al v Snohomish County*, CPSGMHB Case No. 03-3-0013, Final Decision and Order (Dec. 8, 2003), at 11 ("RCW 36.70A.110(3) does not impose a mandatory requirement on planning jurisdictions; it provides that urban growth *should*, not *shall*, be located ...").
- 132 148 Wn. App. 120, 130, 197 P.3d 1228 (2009) (emphasis supplied)
- 133 See also, *Wold v. City of Poulsbo*, CPSGMHB Case No. 10-3-0005c, Final Decision and Order (Aug. 9, 2010), at 60; *Citizens for Responsible Growth v. Snohomish County*, CPSGMHB Case No. 03-3-0013, Final Decision and Order (Dec. 3, 2003) at 11.
- 134 *MBACamwest III v City of Sammamish*, CPSGMHB Case No. 05-3-0045, Final Decision and Order, (Feb. 21, 2006), at 15.
- 135 The Board notes also that RCW 36.70A.110 addresses designation of urban growth areas. The present case involves a change of use in an existing urban area, not a UGA designation.
- 136 See, *Judd v AT&T*, 152 Wn.2d 195, 203 (2004); *Aripa v DSHS*, 91 Wn2d 135, 139 (1978).
- 137 *Petso II v City of Edmonds*, CPSGMHB Case No. 09-3-0005, Final Decision and Order (Aug 17, 2009) at 9; *Litowitz, et al, v City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order (Jul. 22, 1996), at 14; *Keesling v King County*, CPSGMHB Case No. 05-3-0001, Final Decision and Order (July 5, 2005), at 27.
- 138 *North Clover Creek v. Pierce County*, CPSGMHB Case No. 10-3-0003c, Final Decision and Order (Aug. 2, 2010), at 8.
- 139 RCW 36.70A.020(1) (emphasis added).
- 140 *Suquamish Tribe, et al v Kitsap County*, CPSGMHB Case No. 07-3-0019c, Final Decision and Order (Aug. 15, 2007), at 20-26; *Fallgatter v City of Sultan*, CPSGMHB Case No. 06-3-0003, Final Decision and Order (June 29, 2006), at 16; *Hensley v City of Woodinville*, CPSGMHB Case No. 96-3-0031, Final Decision and Order (Feb. 25, 1997), at 9.
- 141 *Bremerton et al v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Finding of Noncompliance and Determination of Invalidity (Sep. 8, 1997), at 41.
- 142 *Suquamish Tribe, et al v Kitsap County (Suquamish II)*, CPSGMHB Case No. 07-3-0019c, Final Decision and Order (Aug. 15, 2007), at 26 ("The CFE must take into account through its inventory and plan, the urban services needed throughout the UGA, not just on its developing fringe, over the 20-year planning period.") Rev'd on other grounds — *Suquamish Tribe, et al v CPSGMHB*, 156 Wn.App. 743 (2010).

- 143 *Suquamish II*, Order on Motion for Reconsideration (Sep. 13, 2007) at 4.
- 144 *Suquamish II*, Order Finding Compliance (June 5, 2008).
- 145 *Bothell, et al v Snohomish County*, CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007).
- 146 *Bothell* at 21.
- 147 WAC 365-196-320(1)(e).
- 148 See Shoreline III, Index # 104, DSEIS Section 3.11 Transportation.
- 149 Shoreline III, Index # 104, DSEIS, at 3.11-13 to 3.11-16.
- 150 Shoreline III, Index # 104, DSEIS Sec. 3.12 Public Services, at 3.12-7 to 3.12-9 (water), 3.12-9 to 3.12-11 (sewer). The Board notes BSRE proposes to implement advanced on-site water recycling and efficiency measures that could significantly reduce demands on regional water supply and sewer capacity.
- 151 *Suquamish II v Kitsap County*, CPSGMHB Case No. 07-3-0019c, Final Decision and Order (Aug 15, 2007) at 20-26.
- 152 Intervenor's Response — Shoreline III, at 22-23.
- 153 EWGMHB Case No. 10-1-0010, Final Decision and Order (Sep. 3, 2010), at 7-8.
- 154 *Fenske*, at 8 (emphasis in original).
- 155 See, e.g., Intervenor's Restatement of Facts, at 6-7, 10, and Shoreline III, Index # 317 "Plan Vision"
- 156 GMA Goal 1 encourages urban growth "where adequate public facilities and services exist or can be provided in an efficient manner." RCW 36.70A.020(1).
- 157 *Bothell, et al v Snohomish County*, CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007), at 22.
- 158 Consolidated Prehearing Brief — Shoreline IV, at 7.
- 159 *Bothell*, at 22.
- 160 Intervenor's Response — Shoreline IV, at 9-10.
- 161 In the Board's Order on Dispositive Motions, the Board acknowledged BSRE's assertion that van pools are only intended as an interim measure until transit service is established. Order, at 21-22. However, SCC 30.34A.085 as worded makes van pools an *alternative* to transit service, not merely a temporary measure.
- 162 Shoreline III, Index # 14; see generally, Shoreline III, Index # 104, Sect. 3.11 Transportation and Transit.
- 163 Shoreline III, Index # 319, at 266.
- 164 Consolidated Prehearing Brief — Shoreline III, at 13, citing DSEIS, at 3.11-26.
- 165 RCW 36.70A.020(9).
- 166 Consolidated Prehearing Brief — Shoreline III, at 22-23; Consolidated Prehearing Brief - Shoreline IV, at 10.
- 167 Shoreline III, Index # 317.
- 168 Intervenor's Response, Shoreline III, at 21.
- 169 Shoreline III, Index # 169, FSEIS, at 3-46 to 3-48.
- 170 Shoreline III, Index # 169, at 3-48.
- 171 Demand for active recreational facilities in Edmonds was the subject of the Board's decision in *Petso II v City of Edmonds*, CPSGMHB Case No. 09-3-0005, Final Decision and Order (Aug 17, 2009).
- 172 Shoreline III, Index # 169, FSEIS at 3-48.
- 173 The UC Code requires open space set-aside of 150 square feet per residential unit and 2% of floor area for non-residential development. Fifty per cent of open space must be open to the public for active recreation, with 25% in one tract. All on-site recreational amenities must be available in the first phase. The Code requires an integrated open space network and public access to the shoreline.SCC 30.34A.070(1) - (3), .190, .180(2)(c)(vii).
- 174 E.g., RCW 36.70A.010 "It is in the public interest that ... local governments cooperate and coordinate with one another in land use planning"; .100 (comprehensive plans "shall be coordinated with and consistent with" neighboring city or county plans); .210(1) (requiring CPPs to provide a "'framework [to] ensure that city and county comprehensive plans are consistent").
- 175 Consolidated Prehearing Brief — Shoreline III, at 23-24; Consolidated Prehearing Brief — Shoreline IV, at 10-16.
- 176 See *Kap II v. City of Redmond*, CPSGMHB Case No. 06-3-0026, Final Decision and Order (Apr. 5, 2007), at 11 (year-long record of emails between city and county concerning the disputed transportation plan established the record of coordination required by Goal 11).
- 177 SCC 30.34A.180; SCC 30.75.
- 178 RCW 36.70A.020 (preamble).

- 179 *DOE/CTED v City of Kent*, CPSGMHB Case No. 05-3-0034, Final Decision and Order (Apr. 19, 2006), at 52-53; *KCRP et al v Kitsap County*, CPSGMHB Case No. 00-3-0019c, Final Decision and Order (May 19, 2001), at 10; *Children's Alliance, et al v City of Bellevue*, CPSGMHB Case No. 96-03-0023, Final Decision and Order (Nov. 13, 1996), at 9.
- 180 The Board acknowledges the BSRE vision for Point Wells meets other GMA priorities and has the potential to fulfill Goals 1, 3, and 12 if the County brings the necessary infrastructure and services plans into compliance as set forth in this Order.
- 181 These include Legal Issues 1, 3, and 4.
- 182 Order on Dispositive Motions, at 20.
- 183 Order on Dispositive Motions, at 8.
- 184 *Klickitat County Citizens v. Klickitat County*, 122 Wn.2d 619, 627, 866 P.2d 1256 (1993).
- 185 *Barrie v Kitsap County*, 97 Wn.2d, 232, 236 (1982); *Klickitat County Citizens*, 122 Wn.2d 619, 633.
- 186 WWGMHB Case No. 03-2-0007, Final Decision and Order (Aug. 22, 2003), at 29.
- 187 Shoreline III, Index # 104.
- 188 Shoreline III, Index # 169.
- 189 Shoreline III, Index # 169, FSEIS Chap. 4: DSEIS Comments: Responses; see e.g., at 3-32, noting analysis of impacts to occur at project development level.
- 190 County Response Brief — Shoreline III, at 23.
- 191 Shoreline III, Index # 110, at 3; Index # 131, at 4; Index # 116.
- 192 RCW 43.21C.030(c)(iii); WAC 197-11-440(5).
- 193 WAC 197-11-786
- 194 WAC 197-11-440(5)(b)(i)
- 195 *SWAP v. Okanogan County*, 66 Wn.App. 539, 506 (1992) (holding SEPA does not require that every remote and speculative alternative to an action be included in the EIS); *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 41 (1994)(not all potential alternatives must be examined).
- 196 WAC 197-11-440(5)(a).
- 197 WAC 197-11-440(5)(b)(ii).
- 198 *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 42, 873 P.2d 498 (1994).
- 199 *Kiewit Construction Grp v. Clark County*, 83 Wn.App. 133, 139-140, 920 P.2d 1207 (1996) (citing *Klickitat County Citizens*, 122 Wn.2d at 633, and *SWAP v Okanogan County*, 66 Wn.App. 439, 442 (1992).
- 200 WAC 197-11-442.
- 201 WAC 197-11-442(1).
- 202 *Brinnon Group v. Jefferson County*, 159 Wn.App 446, 481 (2011), citing *Weyerhaeuser v. Pierce County*, 124 Wn.2d at 42.
- 203 WAC 197-11-442(2) (emphasis supplied).
- 204 WAC 197-11-442(4).
- 205 Consolidated Prehearing Brief — Shoreline III, at 29, citing Shoreline DSEIS Comment, Shoreline III, Index # 218, p. 3.
- 206 For example, a Paramount of Washington 2006 proposal to develop 1200 - 1400 housing units, a marina complex, with access to transit via van pools, Shoreline III, Index # 16; Woodway's Point Wells comprehensive plan alternatives, DSEIS, Appendix A. Docket XIII Scoping Summary; Woodway Mayor Nichols letter re: scoping (undated), Shoreline III, Index # 35; Woodway's 11/4/08 proposal for an Urban Village development, Shoreline III, Index # 77.
- 207 Compare, *Brinnon Grp. v. Jefferson County*, 159 Wn.App. 446 (2011); *Davidson Series v City of Kirkland*, GMHB Case No. 09-3-0007c, Finding of Compliance (Feb. 2, 2011), at 8.
- 208 *Brinnon Group*, 159 Wn. App. 446.
- 209 *King County v CPSGMHB*, 138 Wn.2d 161 (1999).
- 210 159 Wn. App. at 482, fn. 10 (citations omitted).
- 211 GMHB Case No. 09-3-0007c, Finding of Compliance, (Feb. 2, 2011), at 8.
- 212 WAC 197-11-786.
- 213 Shoreline III, Index 319.
- 214 WWGMHB Case No. 03-2-0007, Amended FDO (Nov. 3, 2003).
- 215 Consolidated Prehearing Brief — Shoreline III, at 30; Consolidated Prehearing Brief, Shoreline IV, at 18.
- 216 WAC 197-11-440(6)(e).
- 217 Shoreline III, Index # 104, DSEIS; Index # 169, FSEIS, Chapters 3.11 Transportation and 3.12 Public Services. The Board notes relevant agencies are included in the distribution lists DSEIS Chapter 4 and FSEIS Chapter 5.

- 218 WAC 197-11-442(3).
- 219 SEPA differs in this respect from the GMA. The GMA requires that expanded or intensified urban land use designations be accompanied by adopted plans for provision of urban services, either in the county or city's plan or by reference to plans of the agency providing the service. RCW 36.70A.070(3), (4) and (6), requiring capital facilities, utilities and transportation plans consistent with land use plans.
- 220 Consolidated Prehearing Brief — Shoreline III, at 31-34; Consolidated Prehearing Brief — Shoreline IV, at 19-20.
- 221 WAC 197-11-440(6)(c)(iii).
- 222 WAC 197-11-440(6)(e).
- 223 Consolidated Prehearing Brief — Shoreline III at 30, citing WAC 197-11-440(6)(a) and (e)
- 224 Shoreline III, Index # 169, at 3-46 to 3-48; see, Shoreline III Index 104, DSEIS at 3.12-3 to 3.12-5.
- 225 Shoreline III, Index # 169, at 3-48.
- 226 Shoreline III, Index # 169, at 3-48.
- 227 See Legal Issue 6, *supra*.
- 228 Shoreline III, Index # 169, DSEIS, at 3.12-1 to 3.12-3.
- 229 Shoreline III, Index # 169, FSEIS, 3-45 and 3-46; FSEIS 1-13 to 1-14.
- 230 Shoreline III, Index # 169, FSEIS, at 1-12.
- 231 Shoreline III, Index # 169, FSEIS, at 3-45.
- 232 Shoreline III, Index # 169, FSEIS, at 3-45.
- 233 Shoreline III, Index # 169, FSEIS, at 3-46.
- 234 Shoreline III, Index # 104, DSEIS, Section 3.11; Index # 169, FSEIS Section 3.11.
- 235 Shoreline III, Index # 169, FSEIS Section 3.11 at 3-23 to 3-33, 3-40.
- 236 County Response — Shoreline III, at 22, 28; Intervener's Response — Shoreline III, at 24.
- 237 Consolidated Prehearing Brief-Shoreline III, at 30.
- 238 WWGMHB Case No. 03-2-0007, Final Decision and Order (Aug. 22, 2003), at 30 (quoting the hearing examiner's warning concerning a "dangerous incrementalism").
- 239 *Better Brinnon*, at 27, (citing *Butler v. Lewis County*, WWGMHB No. 99-2-0027c, Final Decision and Order (June 30, 2000).
- 240 Shoreline III, Index # 169, FSEIS, at 3-24, 3-25.
- 241 Shoreline III, Index # 169, FSEIS, at 3-23.
- 242 Shoreline III, Index # 169, FSEIS, at 3-33 (includes no-action alternative costs).
- 243 Shoreline III, Index # 169, FSEIS, at 3-23.
- 244 Shoreline III, Index # 169, FSEIS, at 3-24.
- 245 WAC 197-11-440(6)(c)(iii).
- 246 Consolidated Prehearing Brief - Shoreline IV, at 18.
- 247 See *Suquamish Tribe v CPSGMHB*, 156 Wn.App. 743 (2010).
- 248 Consolidate Prehearing Brief — Shoreline IV, at 24-26.
- 249 WAC 197-11-600(3)(b).
- 250 WAC 197-11-600(4)(c).
- 251 Shoreline IV, Index 28.
- 252 Shoreline IV, Index 155.
- 253 Shoreline IV, Index 159.
- 254 Shoreline IV, Index 161. The Board notes not all of the proposed amendments were adopted.
- 255 Shoreline IV, Index 71, p. 50.
- 256 SCC 30.34A.030, Table 30.34A.030(1).
- 257 Shoreline IV, Index 180.
- 258 Shoreline IV, Index 180; Shoreline III, Index 218.
- 259 Consolidated Prehearing Brief — Shoreline IV, at 25.
- 260 BSRE characterizes the Point Wells build-out of 3500 units as an "'imaginary hypothetical.'" Intervener's Restatement of Facts, at 11; Intervener's Response — Shoreline IV, at 15.
- 261 Intervener's Restatement of Facts, at 9.

- 262 Consolidated Prehearing Brief — Shoreline IV, at 26-27; Consolidated Reply Brief — Shoreline IV, at 11. See Shoreline IV, Index # 298, amendment introduced May 5, 2010.
- 263 Consolidated Prehearing Brief Shoreline IV, at 7. The Board notes Shoreline's calculations jump unaccountably from 25% of peak trips to 25% of total population.
- 264 Shoreline III, Index # 180.
- 265 Order on Dispositive Motions, at 20-22.
- 266 Shoreline III, Index # 17. June 27, 2006 Docketing Proposal and SEPA Checklist.
- 267 As indicated above, the Petitioners have not met their burden of proving Ordinance Nos. 09-079 and 09-080 violate GMA requirements. Therefore the Board only addresses the question of invalidity with respect to Ordinance Nos. 09-038 and 09-051.
- 268 *Fallgatter V v City of Sultan*, CPSGMHB Case No. 06-3-0003, Final Decision and Order (June 29, 2006), at 11; *Fallgatter VIII v City of Sultan*, CPSGMHB Case No. 06-3-0034, Final Decision and Order (Feb. 13, 2007), at 14-15; see also *KCRP IV v Kitsap County*, CPSGMHB Case No. 06-3-0007, Order Finding Partial Compliance (Mar. 16, 2007), at 16.
- 269 Shoreline III: Woodway Petition for Review ("PFR") ¶ 4.1, 4.1.1-4.1.4; Shoreline PFR ¶ 3.9; Save Richmond Beach PFR ¶ 17. Shoreline IV: Woodway PFR ¶ 4.1, 4.1.1 - 4.1.4.
- 270 Shoreline III: Shoreline PFR ¶ 3.5, 3.7, 3.9; Save Richmond Beach PFR ¶ 13, 15.
- 271 Shoreline IV: Shoreline PFR ¶ 3.8; Save Richmond Beach PFR ¶ 3.8.
- 272 Shoreline III: Woodway PFR ¶ 4.2, 4.2.1; Save Richmond Beach PFR ¶ 9. Shoreline IV: Woodway PFR ¶ 4.2, 4.2.1.
- 273 Shoreline III: Woodway PFR ¶ 4.2, 4.2.2; Save Richmond Beach PFR ¶ 8; Shoreline PFR 3.1. Shoreline IV: Woodway PFR ¶ 4.2, 4.2.2.
- 274 Shoreline III: Save Richmond Beach PFR ¶ 10.
- 275 Shoreline III: Shoreline PFR ¶ 3.4, 3.6; Save Richmond Beach PFR ¶ 12, 14.
- 276 Shoreline III: Woodway PFR ¶ 4.3 [RCW 36.70A.020(1), (3), (11), (12)]; Shoreline PFR ¶ 3.2 [36.70A.010, 36.70A.020(3), (11)], 3.3 [36.70A.020(12)], 3.7 [36.70A.020(9)], 3.8 [36.70A.020(3)]; Save Richmond Beach PFR ¶ 7 [36.70A.010, 36.70A.020(3), (11)], 11 [36.70A.020(12)], 13 [36.70A.020(9)]. Shoreline IV: Woodway PFR ¶ 4.3 [RCW 36.70A.020(1), (3), (11), (12)]; Shoreline PFR ¶ 3.1 [36.70A.010, 36.70A.020(3), (11)], 3.2 [36.70A.020(12)], 3.3 [36.70A.020(9)], 3.4 [36.70A.020(3)]; Save Richmond Beach PFR ¶ 3.1 [36.70A.010, 36.70A.020(3), (11)], 3.2 [36.70A.020(12)], 3.3 [36.70A.020(9)], 3.4 [36.70A.020(3)].
- 277 Shoreline III: Save Richmond Beach PFR ¶ 20. Shoreline IV: Save Richmond Beach PFR ¶ 3.9.
- 278 Shoreline III: Shoreline PFR ¶ 3.11; Save Richmond Beach PFR ¶ 18.
- 279 Shoreline III: Shoreline PFR ¶ 3.12.
- 280 Shoreline III: Shoreline PFR ¶ 3.13.
- 281 Shoreline III: Save Richmond Beach PFR ¶ 19.
- 282 Shoreline IV: Shoreline PFR ¶ 3.7; Save Richmond Beach PFR ¶ 3.7.
- 283 Shoreline IV: Shoreline PFR ¶ 3.5, 3.6; Save Richmond Beach PFR ¶ 3.5, 3.6.

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